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# federal register

Monday
August 22, 1994

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Monday
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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–NM–124–AD; Amendment 39–9007; AD 94–17–12]**

## Airworthiness Directives; Jetstream Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires repetitive removal of the spoiler actuators, purging the hydraulic system, and installation of an actuator that has been previously certified. This amendment is prompted by a report of damage to the locking mechanisms on some pistons of the spoiler actuators. The actions specified in this AD are intended to prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator.

**DATES:** Effective September 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before October 21, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that, during routine maintenance, the locking mechanisms on the pistons of the spoiler actuators were found to be damaged. The cause of this damage has been attributed to inadequate bleeding of the spoiler hydraulic system. In some instances, the spoiler operation was out of sequence and may have caused damage to the locking mechanisms on the pistons of the spoiler actuators. This condition, if not corrected, could result in uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator.

Jetstream has issued Alert Service Bulletin J41–A27–034, dated June 9, 1994, which describes procedures for removal of the left and right spoiler actuators, purging the hydraulic system, and installation of a previously certified spoiler actuator. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncommanded extension of the lift spoiler. This AD requires repetitively removing the spoiler actuators, purging the hydraulic system, and installing an actuator that has been previously certified. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### 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 shall 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–124–AD." 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 that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94–17–12 **Jetstream Aircraft Limited:** Amendment 39–9007. Docket 94–NM–124–AD.

*Applicability*: Model 4101 airplanes having airplane constructors numbers 41004 through 41033 inclusive, certificated in any category.

*Compliance*: Required as indicated, unless accomplished previously.

To prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator, accomplish the following:

(a) Within 21 days after the effective date of this AD, remove the spoiler actuators in accordance with Jetstream Alert Service Bulletin J41–A27–034, dated June 9, 1994. Following removal of the actuators, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin.

(1) Prior to further flight, purge the hydraulic system to ensure that there is no contamination.

(2) Prior to further flight, install a spoiler actuator that has been previously certified and marked with an "R" after the serial number on the nameplate of the actuator.

(b) Thereafter, repeat the requirements of paragraph (a) of this AD at intervals not to exceed 500 landings.

(c) As of 21 days after the effective date of this AD, all spoiler actuators installed on any airplane shall be previously certified and bear an "R" after the serial number on the nameplate of the actuator, in accordance with Jetstream Alert Service Bulletin J41–A27–034, dated June 9, 1994.

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

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

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A27–034, dated June 9, 1994. 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 Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 6, 1994.

Issued in Renton, Washington, on August 12, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–20286 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 39**

**[Docket No. 94–NM–105–AD; Amendment 39–9000; AD 94–17–05]**

## Airworthiness Directives; Airbus Model A340–211 and –311 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A340–211 and –311 series airplanes. This action requires replacement of certain circuit breakers for the toilet system vacuum generator. This amendment is prompted by reports of excessive vacuum generator overloads or blocked rotor conditions, in which the thermal protection device and/or related aircraft circuit breakers do not interrupt the power supply. The actions specified in this AD are intended to prevent a fire in the event of excessive current in the electrical circuit due to overheating of the vacuum generator.

**DATES:** Effective on September 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before October 21, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A340–211 and –311 series airplanes. The DGAC has advised that it has received reports of electrical overloads in the toilet system vacuum generator or blocked rotors, in which the temperature of the vacuum generator motor increases faster than the detection capability of the thermal protection device and/or the related aircraft circuit breaker. In each case, these devices failed to interrupt the power supply. This condition, if not corrected, could cause the vacuum generator to overheat, which could result in a fire.

Airbus has issued All Operator Telex (AOT) 38–01, dated December 15, 1993, and Service Bulletin A340–38–4013, dated January 5, 1994, which describe procedures for replacement of two circuit breakers for the vacuum generator. Existing circuit breakers, 6 MG and 106 MG, are replaced with faster (20 amp) circuit breakers to provide additional protection in the event of excessive current in the electrical circuit or overheat in the vacuum generator. The DGAC classified the AOT and service bulletin as mandatory and issued French Airworthiness Directive, 94–006–004(B)R1, dated February 2, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a fire in the vacuum generator. This AD requires replacement of two circuit breakers for the vacuum generator with faster type circuit breakers which will improve detection capability of the thermal protection device. The actions are required to be accomplished in accordance with the AOT or service bulletin described previously.

There currently are no Model A340–211 or –311 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 7 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of this AD would be $385 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by notice and 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 shall 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–105–AD." 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.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**94-17-05 Airbus Industrie:** Amendment 39-9000. Docket 94-NM-105-AD.

*Applicability:* Model A340-211 and 311 series airplanes, as listed in Airbus Service Bulletin A340-38-4013, dated January 5, 1994; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a fire due to overheating of the toilet vacuum generator, accomplish the following:

(a) Within 45 days after the effective date of this AD, replace circuit breakers 6 MG and 106 MG, part number NSA 931302-25, in panel 5005VE with faster circuit breakers (20 amp), part number NSA 931322-200, in accordance with either Airbus All Operator Telex (AOT) 38-01, dated December 15, 1993, or Airbus Service Bulletin A340-38-4013, dated January 5, 1994.

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with either Airbus All Operator Telex (AOT) 38-01, dated December 15, 1993, or Airbus Service Bulletin A340-38-4013, dated January 5, 1994. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 6, 1994.

Issued in Renton, Washington, on August 8, 1994.

**James V. Devany,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94-19699 Filed 8-19-94; 8:45 am]

BILLING CODE 4910-13-U

**14 CFR Part 39**

**[Docket No. 94-NM-19-AD; Amendment 39-9003; AD 94-17-08]**

## Airworthiness Directives; De Havilland Model DHC-7 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, that requires removal of the aluminum or brass hardware in the firewall terminal block assembly and replacement with steel hardware. This amendment is prompted by the results of an investigation, which revealed that corroded aluminum washers in the DC firewall terminal block assembly may loosen the electrical connections. The actions specified by this AD are intended to prevent interruption of DC electrical power due to connections that may have loosened from corrosion.

**DATES:** Effective on September 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC-7 series airplanes was published in the **Federal Register** on April 22, 1994 (59 FR 19154). That action proposed to require removal of the aluminum or brass hardware in the firewall terminal block assembly and replacement with steel hardware (Modification 7/2617).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,075, or $165 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**94–17–08 De Havilland, Inc.:** Amendment 39–9003. Docket 94–NM–19–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent interruption of DC electrical power due to connections that may have loosened from corrosion, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove the aluminum or brass hardware in the firewall terminal block assembly and replace with steel hardware (Modification 7/2617), in accordance with de Havilland Service Bulletin S.B. 7–24–69, dated October 8, 1993.

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement shall be done in accordance with de Havilland Service Bulletin S.B. 7–24–69, dated October 8, 1993. 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 21, 1994.

Issued in Renton, Washington, on August 11, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–20156 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 39**

**[Docket No. 93–ANE–44; Amendment 39–9006; AD 94–17–11]**

## Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–200, S–600, and S–1200 Series Magnetos

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, that currently requires replacing Bendix ignition coils and rotating magnets, regardless of total time in service (TIS), with improved TCM ignition coils, rotating magnets and marking magnetos to indicate compliance with this AD, except for the S–1200 series magnetos on which the AD requires replacing only the ignition coils as that series magneto already incorporates rotating magnets with the improved TCM design. This amendment limits the number of magnetos requiring replacement. This amendment is prompted by a report from the manufacturer that there is an error in the serial number listing of affected magnetos. The actions specified by this AD are intended to prevent magneto failure and subsequent engine failure.

**DATES:** Effective September 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before October 21, 1994.

**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–44, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. 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:** Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

**SUPPLEMENTARY INFORMATION:** On December 29, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94–01–03, Amendment 39–8785 (59 FR 4555, February 1, 1994), to require replacing certain Bendix ignition coils and rotating magnets, regardless of time in service (TIS), with improved serviceable Teledyne Continental Motors (TCM) ignition coils and rotating magnets at either the next 100-hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of the AD, whichever occurs first. For S–1200 series magnetos, the AD requires replacing only the ignition coils as the rotating magnets on that series magneto already incorporates the improved TCM design. Additionally, the AD requires remarking magnetos to indicate compliance with the AD. That action was prompted by recent reports of accidents caused by failures of magnetos incorporating older Bendix components that had not been replaced in accordance with superseded AD 73–07–04, Amendment 39–1731 (38 FR 27600, October 5, 1973). That condition, if not corrected, could result in magneto failure and subsequent engine failure.

Since the issuance of that AD, TCM has informed the FAA that an error in the serial number listing in TCM Service Bulletin (SB) No. 637, dated December 1992, resulted in too many affected magnetos requiring AD compliance. The AD should apply only to certain magnetos manufactured by Bendix in Sidney, New York, and not to any Bendix magnetos built in either Jacksonville, Florida, or Atlanta, Georgia. In addition, the S–600 series magnetos require replacement of only the rotating magnets and not the ignition coils. Finally, the FAA received reports that there is some confusion as

to how the S–20, S–200, S–600, and S–1200 series magnetos are referenced in the TCM SB and the AD. TCM has issued a revised SB that corrects these errors.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4, 1994, that describes procedures for replacing certain Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets and marking magnetos to indicate compliance with this MSB.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD revises AD 94–01–03 to require replacement of certain Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets. For the S–600 series magnetos, this AD requires replacing only the rotating magnets as there is no replacement for the ignition coils. For the S–1200 series magnetos, this AD requires replacing only the ignition coils as the rotating magnets on that series magnetos already incorporate the improved TCM/Bendix design. Finally, this AD requires marking magnetos to indicate compliance with this AD. The actions are required to be accomplished in accordance with the SB described previously.

The errors in the SB have caused an undue economic burden to those operators that were mandated to replace the specified components of magnetos. This AD action will therefore relieve operators of unnecessary expense, and the FAA is issuing this AD as a final rule without prior comment. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**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–44." 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 that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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 removing Amendment 39–8785 (59 FR 4555, February 1, 1994) and by adding a new airworthiness directive, Amendment 39–9006, to read as follows:

**94–17–11 Teledyne Continental Motors:** Amendment 39–9006. Docket 93–ANE–44. Revises AD 94–01–03, Amendment 39–8785.

*Applicability:* Teledyne Continental Motors (TCM), formerly Bendix magnetos:

S–20, S–200, and S–600 series magnetos with red or black Bendix (not TCM) data plates having serial numbers (S/N's): Lower than 2000000 without any letter prefix; or S/N's lower than A16058 having the letter "A" prefix.

S–20, S–200, and S–600 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

S–1200 series magnetos with red Bendix (not TCM) data plates having S/N's: lower than 2000000 without any letter prefix; or S/N's lower than A132844 having the letter "A" prefix.

S–1200 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

These magnetos are installed on but not limited to reciprocating engine powered aircraft manufactured by Beech, Cessna, Maule, Mooney, and Piper.

**Note 1:** Yellow Bendix or TCM service spare data plates may have been installed during a field overhaul; use model and S/N to determine applicability.

**Note 2:** No action is required for those magnetos in compliance with AD 94–01–03.

**Note 3:** Magnetos built by Bendix in Jacksonville, Florida, and Magnetos built by TCM in Atlanta, Georgia, as indicated on the data plate, are not affected by this AD.

**Note 4:** The paint on some early data plates may have been obliterated and the data plate will appear silver in color; use model and serial number to determine applicability.

**Note 5:** The FAA has received reports of some confusion as to what is meant by S–20, S–200, S–600, and S–1200 series magnetos as referenced in TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4,

1994, and this AD. A typical example is S6RN–25, where the S designates single type ignition unit, the 6 designates the number of engine cylinders, the R designates right hand rotation, the N is the manufacturer designator (this did not change when TCM purchased the Bendix magneto product line), and the number after the dash indicates the series (a –25 is a S–20 series magneto, while a –1225 is a S–1200 series magneto).

Compliance: Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) For Bendix S–20 and S–200 series magnetos, replace Bendix ignition coils and rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with appropriate serviceable ignition coils and rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours time in service (TIS) after the effective date of this AD, whichever occurs first.

(b) For the Bendix S–600 series magnetos, replace Bendix rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with appropriate serviceable rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

**Note:** The ignition coils on the S–600 series magnetos already incorporate the improved design.

(c) For the Bendix S–1200 series magneto, replace Bendix ignition coils identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with appropriate serviceable ignition coils at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

**Note:** The rotating magnets on the S–1200 series magnetos already incorporate the improved design.

(d) After compliance with paragraphs (a), (b), or (c) of this AD, as applicable, and prior to further flight, mark the magneto in accordance with the Identification Instructions of TCM SB No. MSB644, dated April 4, 1994.

(e) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta 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, Atlanta Aircraft Certification Office.

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

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The replacement and identification shall be done in accordance with the following service document:

| Document No. | Pages | Date |
|---|---|---|
| TCM SB No. MSB644. Total pages: 3 | 1–3 | Apr. 4, 1994. |

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 Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. 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 on September 6, 1994.

Issued in Burlington, Massachusetts, on August 11, 1994.

**Jay J. Pardee,**

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

[FR Doc. 94–20413 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–03–P

## 14 CFR Part 39

**[Docket No. 93–NM–106–AD; Amendment 39–9004; AD 94–17–09]**

## Airworthiness Directives; Boeing Model 747–100, –200, –300, and –400 Series Airplanes Equipped with BFGoodrich Evacuation Ramp/Slides

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, –300, and –400 series airplanes, that requires various modifications of certain evacuation ramp/slides. This amendment is prompted by reports of several evacuation ramp/slide malfunctions. The actions specified by this AD are intended to prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

**DATES:** Effective September 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200, –300, and –400 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 15, 1994 (59 FR 11940). That action proposed to require various modifications of certain evacuation ramp/slides.

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

One commenter supports the proposed rule.

Another commenter requests that the proposed 24-month compliance time for modification of the ramp/slides be extended to 36 months so that it will coincide with affected operators' scheduled overhauls. The commenter points out that the manufacturer of the subject ramp/slides recommends a compliance time of 36 months. The commenter believes that safety will not be compromised if an extension is allowed. The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts, the average utilization of the affected fleet, and normal maintenance schedules for timely accomplishment of the modification. The FAA finds that the proposed 24-month compliance time represents the maximum interval of time allowable wherein the

modifications can reasonably be accomplished and an acceptable level of safety can be maintained. Further, the FAA took into account the 36-month compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 24 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer.

Another commenter requests that the proposed 24-month compliance time for modification be shortened to 6 months. This commenter believes that a shorter compliance time is necessary for continued safe operation of airplanes equipped with the affected ramp/slides. The FAA does not concur with the commenter's request. As explained above, the FAA considered many factors, including the safety implications, when developing an appropriate compliance time for this AD. After consideration of all the available information, the FAA cannot conclude that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is warranted. To reduce the compliance time of the AD would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that process may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a process to the compliance date of this final rule as issued, the increment in time is minimal. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original proposal, the FAA has determined that further delay of this final rule action is not appropriate.

Two commenters request that paragraph (a) of the proposed rule be revised to require accomplishment of the modifications specified only in paragraphs 2.C., 2.D.(2), 2.E., and 2.F. of the BFGoodrich service bulletin cited in the AD. The commenters believe that accomplishment of paragraph 2.G. of the service bulletin should be optional, since the modifications included in that paragraph are considered to be product improvements that are not associated with the addressed unsafe condition. One of these commenters, BFGoodrich, states that approximately 40 percent of the slide modification kits were shipped to operators prior to the issuance of the supplemental NPRM, and some operators may not have accomplished the modifications specified in paragraph 2.G. of the service bulletin. The commenter expresses a concern that a requirement to accomplish that paragraph would result in additional costs and unscheduled removal and maintenance actions for operators.

The FAA concurs with the commenters' request, and has revised paragraph (a) of the final rule to specify that accomplishment of the product improvement modifications specified in paragraph 2.G. of the Accomplishment Instructions of the service bulletin is not required by this AD.

Two commenters request that the proposal be revised to cite the latest revision to the BFGoodrich service bulletin specified in the AD and to reference Boeing Service Bulletin 747–25–3028. The FAA concurs. Since the issuance of the supplemental NPRM, the FAA has reviewed and approved Revision 2 of BFGoodrich Service Bulletin 7A1418–25–253, dated April 15, 1994, which corrects certain typographical errors that appeared in Revision 1 of that service bulletin and references the Boeing service bulletin. The Boeing service bulletin describes procedures for an alternative method of modifying of the packboard and girt. Paragraph (a) of the final rule has been revised to cite the latest revision of the service bulletin as an additional source of service information. Further, "NOTE 2" has been added to paragraph (a) of the final rule to reference Boeing Service Bulletin 747–25–3028 as an additional source of service information for modifying the packboard and girt.

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

There are approximately 1,100 BFGoodrich ramp/slides of the affected design installed on Boeing Model 747–100, –200, –300, and –400 series airplanes in the worldwide fleet. The FAA estimates that 300 of these subject ramp/slides are installed on Boeing Model 747–100, –200, –300, and –400 series airplanes of U.S. registry that will be affected by this AD. It will take approximately 22 work hours per ramp/slide to accomplish the required actions, at an average labor rate of $55 per work hour. Required parts will be provided by the ramp/slide manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $363,000, or $1,210 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

However, the FAA has been advised that 40 percent of the required modification kits have been delivered to airlines having airplanes affected by this AD. From this information, the FAA can assume that 40 percent of the affected fleet already have been modified in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be 40 percent less than the "total cost impact" figure indicated above.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**94-17-09 Boeing:** Amendment 39-9004. Docket 93-NM-106-AD.

Applicability: Model 747-100, -200, -300, and -400 series airplanes equipped with BFGoodrich evacuation ramp/slides; as listed in BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993, or Revision 2, dated April 15, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the door 3 offwing evacuation ramp/slide, part number 7A1418-( ), in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993; or Revision 2, dated April 15, 1994; as applicable. Accomplishment of the product improvement modifications specified in paragraph 2.G. of the Accomplishment Instructions of the service bulletin is not required by this AD.

**Note 1:** Modification of the reservoir assembly (part number 4A3416-1) to the part number 4A3416-3 configuration, as specified in paragraph 2.D.(1) of the service bulletin, is required currently by AD 91-25-02, Amendment 39-8103 (56 FR 63629, December 5, 1991).

**Note 2:** BFGoodrich Service Bulletin 7A1418-25-253, Revision 2, dated April 15, 1994, references Boeing Service Bulletin 747-25-3028, dated August 26, 1993, as an additional source of service information for modification of the packboard and girt.

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

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993; or BFGoodrich Service Bulletin 7A1418-25-253, Revision 2, dated April 15, 1994. 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 the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 21, 1994.

Issued in Renton, Washington, on August 11, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94-20157 Filed 8-19-94; 8:45 am]

BILLING CODE 4910-13-U

## 14 CFR Part 39

**[Docket No. 94-NM-20-AD; Amendment 39-9005; AD 94-17-10]**

## Airworthiness Directives; De Havilland Model DHC-8 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC-8 series airplanes, that requires removal of the aluminum or brass hardware in the firewall terminal block and battery shunt cable assemblies and replacement with steel hardware. This amendment is prompted by the results of an investigation, which revealed that corroded aluminum washers in the DC firewall terminal block and battery shunt cable assemblies may loosen the electrical connections. The actions specified by this AD are intended to prevent interruption of DC electrical power due to connections that may have loosened from corrosion.

**DATES:** Effective September 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC-8 series airplanes was published in the **Federal Register** on April 22, 1994 (59 FR 19152). That action proposed to require removal of the aluminum or brass hardware in the firewall terminal block and battery shunt cable assemblies and replacement with steel hardware (Modification 8/1984).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 130 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,450, or $165 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

**94–17–10 De Havilland, Inc.:** Amendment 39–9005. Docket 94–NM–20–AD.

Applicability: All Model DHC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent interruption of DC electrical power due to connections that may have loosened from corrosion, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove the aluminum or brass hardware in the firewall terminal block and battery shunt cable assemblies and replace with steel hardware (Modification 8/1984), in accordance with de Havilland Service Bulletin S.B. 8–24–47, Revision 'A,' dated November 29, 1993.

(b) As of the effective date of this AD, no person shall install on any airplane a terminal block, part number 72470052–101 or 82450068–001, unless it has been previously reworked and bears the identification 8/1984.

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

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

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The removal and replacement shall be done in accordance with de Havilland Service Bulletin S.B. 8–24–47, Revision 'A,' dated November 29, 1993. 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 21, 1994.

Issued in Renton, Washington, on August 11, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–20158 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 71

**[Docket No. 27855; Amendment No. 71–23]**

## Airspace Designations; Incorporation by Reference

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Federal Aviation Regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9B, Airspace Designations and Reporting Points. This action also explains the procedures FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

**EFFECTIVE DATE:** These regulations are effective September 16, 1994, through September 15, 1995. The incorporation by reference of FAA Order 7400.9B is approved by the Director of the Federal Register as of September 16, 1994, through September 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Webb, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9232.

**SUPPLEMENTARY INFORMATION:**

### History

FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, listed Class A, Class B, Class C, Class D, Class E airspace areas and reporting points. Due to the large number and frequent revision of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in Federal Aviation Regulations (FAR) § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9A in § 71.1 effective September 16, 1993, through September 15, 1994. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9A in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9B. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9B in § 71.1 as of September 16, 1994, through September 15, 1995. This rule also explains the procedures FAA will use to amend the airspace designations incorporated by reference in part 71. § § 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9B.

### The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9B effective September 16, 1994, through September 15, 1995. During the

incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9B in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined that this action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

**PART 71—[AMENDED]**

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

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

2. Section 71.1 is revised to read as follows:

**§71.1 Applicability.**

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994. 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. The approval to incorporate by reference FAA Order 7400.9B is effective September 16, 1994, through September 15, 1995. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9B may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.9B may be inspected in Docket No. 27855 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, DC weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 1994, through September 15, 1995.

**§71.5 [Amended]**

3. Section 71.5 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.31 [Amended]**

4. Section 71.31 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.33 [Amended]**

5. Paragraph (c) of § 71.33 is amended by removing the words "FAA Order 7400.9" and adding, in their place, the words "FAA Order 7400.9B."

**§71.41 [Amended]**

6. Section 71.41 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.51 [Amended]**

7. Section 71.51 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.61 [Amended]**

8. Section 71.61 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.71 [Amended]**

9. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.79 [Amended]**

10. Section 71.79 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

**§71.901 [Amended]**

11. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

Issued in Washington, DC, on August 8, 1994.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 94–20508 Filed 8–19–94; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 416

**RIN 0960–AD66**

### Appeal Rights Following Mass Change Resulting in Reduction, Suspension, or Termination of State Supplementary Payments

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** We are amending our current rules with regard to initial determinations in order to revise our policy on providing appeal rights when a State-initiated mass change in federally administered State supplementary payment level amounts results in the reduction, suspension or termination of a recipient's State supplementary payments, or when Federal administration of State supplementary payments has been terminated.

**DATES:** These rules are effective August 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471. For information on eligibility or claiming benefits, call our national toll-free number 1–800–772–1213.

**SUPPLEMENTARY INFORMATION:** Section 1616(a) of the Social Security Act (the

Act) authorizes the Secretary of Health and Human Services (the Secretary) to enter into agreements with the States under which the Secretary administers the States' supplementary payments. State supplementary payments are cash benefits paid on a regular basis to individuals who are receiving Federal Supplemental Security Income (SSI) benefits, or who, but for their income, would be eligible to receive SSI benefits. When the Social Security Administration, acting as the Secretary's delegate, has entered into an agreement with a State for the Federal administration of these supplementary payments, the State transfers the funds necessary to make these payments to us and we make these payments to the recipients. States that make State supplementary payments but that have not elected Federal administration make the payments themselves directly to recipients. If a State elects Federal administration, we charge the State an administration fee as of October 1, 1993, for each supplementary payment we make on behalf of the State, pursuant to section 13731 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). A federally administered State supplementary payment is included in the same payment with the Federal SSI benefit where both a State supplementary payment and a Federal SSI benefit are payable. The payment level amounts of State supplementary payments are determined by the States. From time to time, States may change the payment level amounts, either by increasing them, or by reducing them.

Our existing regulations provide in § 416.1402(b) that reduction, suspension, or termination of SSI benefits is an initial determination. The regulations at § 416.2005(d) provide that, generally, the regulations in effect for the SSI program are applicable in the Federal administration of State supplementary payments. Therefore, any reduction, suspension, or termination of federally administered State supplementary payments is also an initial determination. Section 416.1404 provides that we will mail to the affected recipient a written notice of our initial determination, including the right to a reconsideration before the determination takes effect. Further, § 416.1413b provides that a recipient has 60 days within which to appeal our determination that we plan to reduce, suspend, or terminate his or her benefits.

In the current process under our regulations, we consider the reduction, suspension or termination of State supplementary payments to be an initial determination, mail appropriate written notice of our initial determination and provide appeal rights to all affected recipients. We apply this process even with respect to mass changes in State supplementary payment level amounts, *i.e.*, a State-initiated change in the level(s) of federally administered State supplementary payments payable to all recipients of State supplementary payments or to categories of such recipients, due, for example, to State legislative or executive action. In many such cases in which a recipient appeals the reduction, suspension, or termination of his or her State supplementary payments due to the State-initiated mass change, he or she wishes only to dispute the propriety, fairness, or legality of that mass change, for example, and not to dispute the application of that mass change to the facts of his or her case, *i.e.*, not to dispute the revised benefit computation.

We believe that this policy of providing affected recipients the right to appeal the State's action in reducing payment levels in these cases is not required by the Act or by fundamental principles of procedural due process. Moreover, in the past, this policy has had a needless administrative impact on us since we do not control, nor can we alter, the State-initiated mass change. This impact was demonstrated most recently when a large federally administered State supplementary payment State, as a result of a State law change, initiated an across-the-board reduction in its State supplementary payment levels. Over 27,000 affected individuals appealed to us the resulting reduction, suspension, or termination of their State supplementary payments on the basis that the State-initiated mass change was unfair to them, and not because they wished to dispute the resulting computation of their benefits. The vast majority of affected individuals requested benefit continuation at the previously established payment levels, pending issuance of decisions on the initial appeals, as set forth in § 416.1336(b). SSA provided appeal opportunities to individuals. It then informed them that their appeals were denied on the basis that SSA had no authority to order the State to repeal its law and reinstate State supplementary payments to their former higher levels. Since States must provide the funding for State supplementary payments, in some cases the State incurred additional program costs while the individuals' appeals were pending. Processing these actions served only to exacerbate existing workload backlogs by diverting scarce workpower resources from other necessary service delivery activities.

The courts have stated clearly that the legal sufficiency of an agency's procedures with respect to recipients of public assistance who are experiencing such a mandated change in their entitlement will be measured first under an agency's statute and regulations. If no violation of the statute or regulations is found, then it must be determined if the agency's procedures violate constitutional due process requirements. In *Atkins* v. *Parker*, 472 U.S. 115 (1985), the United States Supreme Court considered whether the Food Stamp Act required that an individual hearing be provided for every household affected by a general change in the law. The Court found that the Food Stamp Act distinguished between an adverse action based on the particular facts of an individual case, on the one hand, and a mass change initiated by the State or Federal Government affecting the entire caseload of recipients or significant portions thereof, on the other hand, with Congress only contemplating hearings on individual fact-based adverse actions.

Our existing regulations do not relieve us from providing appeal rights to recipients for mass change actions in their State supplementary payments. Nevertheless, we believe that there is no requirement in the Act that we provide a recipient of a federally administered State supplementary payment an opportunity to appeal a reduction, suspension or termination of his or her payments resulting from a State-initiated mass change, if that individual does not dispute the application of that mass change to the facts of his or her case. Like the Food Stamp Act, only appeal rights with respect to individual adverse actions appear to be contemplated under the Social Security Act.

With regard to constitutional due process requirements, we believe that those requirements mandate that an individual whose benefits are reduced, suspended or terminated as a result of a State-initiated mass change be afforded the full measure of appeal rights in a matter in which he or she disputes the application of that mass change to the facts of his or her particular case, that is, in a case where the recipient alleges that we have improperly computed his or her benefits as a result of the mass change. In *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the United States Supreme Court held that fundamental notions of due process of law required that individuals who sought to challenge the termination of their public entitlements as "resting on incorrect or misleading factual premises

or on misapplication of rules or policies to the facts of particular cases" be afforded a hearing in which they could "defend by confronting any adverse witnesses and by presenting * * * arguments and evidence orally." *Id.* at 268.

In light of the *Atkins* v. *Parker* and *Goldberg* v. *Kelly* decisions, we do not believe that full appeal rights under our administrative review system are required in situations where claimants are contesting only the State legislative or executive action which results in a change in the level(s) of the federally administered State supplementary payments. Instead, under these regulations, claimants will receive notice of the State-initiated mass change and be given appeal rights only with respect to the calculation of their individual benefit amount made pursuant to the mass change. These procedures follow the rationale of the *Atkins* v. *Parker* decision which distinguished adverse actions based on mass changes from adverse actions based on the facts of an individual case and still provide an opportunity to contest the factual bases or the application of rules to particular facts as is required by the *Goldberg* v. *Kelly* decision.

In cases where the individual desires to appeal the reduction, suspension or termination resulting from a State-initiated mass change only to dispute the propriety, fairness, or legality, for example, of the mass change, and presents no claim that his or her benefits have been improperly calculated, then we believe that the Act and procedural due process do not require that we provide such an individual the right to appeal that action. As indicated above, State supplementary payment levels are established by the States. Any change in those levels as they apply across the caseload of State supplementary payment recipients is, for the most part, a matter within the control and jurisdiction of the States. We are required to administer the States' payment levels under the Act, regulations and provisions of the Federal/State Supplementation Agreements and have no right, power or authority to find State-initiated mass changes in those levels to be unfair, illegal or improper, nor can we order the States to increase those payment levels.

In preparing these regulatory changes, we have noted the Secretary's regulations for the Administration for Children and Families regarding the availability of a hearing in cases of mass change in the Aid to Families With Dependent Children program. Those regulations provide in 45 CFR 205.10(a)(5) that "[a] hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation." We believe that a similar approach is appropriate where a mass change in the level of a federally administered State supplementary payment is the result of State legislative or executive action.

Thus, because of the futility of affording individuals affected by a State-initiated mass change the opportunity to appeal the effects of that mass change in cases involving no disputed facts but only a claim, for example, regarding the propriety or legality of the mass change itself, we believe that it is appropriate for us to amend our regulations so as to limit the opportunity to appeal, and the corresponding right to continue to receive benefits pending a decision on the initial appeal, as set forth in § 416.1336(b), only to those cases involving disputed facts. We, therefore, are revising our regulations at § 416.1401 to define a "mass change" as a State initiated change in the level(s) of federally administered State supplementary payments applicable to all recipients of such payments, or to categories of such recipients, due, for example, to State legislative or executive action. In addition, we are revising our regulations at § 416.1402 by adding a paragraph (n) to state that only our calculation of the amount of change in an individual's State supplementary payment amount which results from a mass change is an initial determination, subject to administrative and judicial review, and continuation of benefits pursuant to § 416.1336(b).

We also are revising our regulations at § 416.1403(a) to provide that a determination to reduce, suspend, or terminate federally administered State supplementary payments due to a State-initiated mass change in the level of such payments is not an initial determination, except as is provided in § 416.1402(n), i.e., only our calculation of the amount of the change in the State supplementary payment is an initial determination. In addition, we are revising § 416.1403(a) to clarify that the termination of Federal administration of State supplementary payments is not an initial determination. The termination of Federal administration of these payments means only that the State has assumed the responsibility for the issuance of its supplementary payments. The amount of State supplementary payments an individual receives will not change because of the termination of Federal administration. The only change will be that the State will be making the payments. There will be no adverse impact to the recipients solely due to the change. Further, we are revising § 416.1403(b) to explain that we will provide to these recipients a notice of the termination of Federal administration, although the determination will not be subject to administrative or judicial review.

Early in the SSI program, which became effective January 1, 1974, several States terminated Federal administration of their State supplementary payments. Although there have been no recent terminations, we are revising § 416.1403 to clearly state our policy on the effect of terminations.

**Comments on Notice of Proposed Rulemaking**

On August 10, 1993, we published proposed rules in the **Federal Register** at 58 FR 42514 with a 60-day comment period. We received 3 letters with comments. Following are summaries of those comments and our responses to them.

*Comment:* Claimants should not be denied the right to challenge a reduction in State supplementary payments below federally mandated levels.

*Response:* Federal law does not mandate State supplementary payment levels. States are free to establish those levels in amounts that they alone determine are appropriate. In certain cases, reduction by a State of its payment levels below those established by section 1618 of the Act may result in the loss of the State's eligibility for payments pursuant to title XIX. In such cases, SSA has no authority to order the State to reinstate its State supplementary payment levels at or above the levels established by section 1618. Accordingly, no purpose would be served by permitting claimants to appeal a reduction in State supplementary payment levels below those established by section 1618.

*Comment:* The regulations should require SSA to afford each affected recipient with written notice and the opportunity for a hearing, consistent with *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), before reducing that recipient's State supplementary payment.

*Response:* Publication of these regulations will not affect SSA's current practice of first sending written notice to the recipient informing him or her of the mass change and of its impact on his or her benefit amount or eligibility before effectuating any reduction, suspension, or termination as a result of that mass change. Provision of such written notice is consistent with the

requirements of §§ 416.1402(b), 416.1404(c), 416.1413b, and 416.1336. Such notice will also inform the recipient of his or her right to appeal the determination to reduce, suspend or terminate his or her payment as a result of the mass change. However, that right to appeal, and the corresponding right to request benefit continuation, will be limited only to those cases in which the individual contends that our calculation of the amount of the change in his or her State supplementary payment resulting from the mass change is incorrect. Individuals will be informed that there will be no right to appeal the determination on any other grounds. As explained in the discussion under Supplementary Information, we believe these procedures to be fully consistent with *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

*Comment:* After a mass change in State supplementary payments, SSA must be prepared to carefully explain to recipients the resulting adjustment in their benefit checks and be prepared to handle a heavy volume of calls and requests for information from those recipients.

*Response:* We will ensure that our notice language will clearly explain the mass change that is occurring; how it will affect the recipient's monthly payment; and how, and in what instance, the recipient may invoke his or her right to appeal our determination. In the event of a mass change, we will prepare our offices to respond to an increase in phone-in inquiries and will issue to those offices instructional materials to assist them in responding to those inquiries. We have initiated these actions in prior instances of mass change and expect to do so again as the need arises.

*Comment:* SSA should try to require States to provide advance notice to the SSI recipient community of the State's decision to reduce State supplementary payments.

*Response:* We have no authority to compel a State to provide to its citizens advance notice of its decision to initiate a mass change in the level of its State supplementary payments. We are generally informed of a State's decision to initiate a mass change when such information becomes a matter of public knowledge. In the past, prior to initiating a mass change, we have endeavored to discuss the impact with responsible State officials and expect to do this in the event of future mass changes.

*Comment:* The Supplementary Information section of the proposed regulations is misleading because recent legislation requires States to pay fees for Federal administration of their State supplementary payments. This requirement is important because it may affect the State's ability to pay the cost of State supplementary payments.

*Response:* We agree and have amended the discussion under Supplementary Information to reflect the fact that as of October 1, 1993, we charge States that have elected Federal administration of their State supplementary payments an administration fee for each supplementary payment made on behalf of the State, pursuant to section 13731 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).

*Comment:* SSA should inform each State of the potential loss of medicaid payments that can accompany a reduction or termination of a State supplementary payment.

*Response:* We believe that all States that supplement the Federal SSI benefit are aware that reduction of State supplementary payment levels below those levels established by section 1618 of the Act may result in the loss of their eligibility for payments pursuant to title XIX. Indeed, we periodically discuss with those States the impact of section 1618 of the Act on their payment levels.

*Comment:* Allowing appeals in mass change cases only if the individual contests the computation of his or her revised State supplementary payments creates a threshold jurisdictional issue that will further complicate the appeals process and will not result in a significant cost savings to SSA.

*Response:* We disagree. By limiting appeals only to cases in which the recipient disputes the computation of his or her State supplementary payment resulting from a mass change, SSA will effect a significant cost savings. Furthermore, by prohibiting the pursuit of such claims through the administrative and judicial process, SSA will avoid the substantial administrative consequences that can result when large numbers of individuals who wish only to contest the propriety, fairness, or legality of a mass change request appeals of reductions, suspensions, or terminations resulting from that mass change.

Based on our responses to the comments on the proposed rules, we have not changed the text of the proposed rules. In these final rules, we made only several nonsubstantive changes to the proposed rules. We are, therefore, publishing the proposed rules essentially unchanged as final rules.

**Regulatory Procedures**

*Executive Order No. 12866*

The Office of Management and Budget has reviewed these rules and determined they meet the criteria for a significant regulatory action under E.O. 12866.

*Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

*Paperwork Reduction Act*

These final rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: June 28, 1994.

**Shirley Chater,**

*Commissioner of Social Security.*

Approved: July 22, 1994.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, we are amending subpart N of part 416 of 20 CFR chapter III as follows:

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for Subpart N of Part 416 continues to read as follows:

**Authority:** Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, 1383b.

2. Section 416.1401 is amended by adding the following new definition after the definition for "Determination:"

**§ 416.1401 Definitions**

* * * * *

*Mass change* means a State-initiated change in the level(s) of federally administered State supplementary payments applicable to all recipients of such payments, or to categories of such

recipients, due, for example, to State legislative or executive action.

* * * * *

3. Section 416.1402 is amended by deleting "and" at the end of paragraph (l), replacing the period at the end of paragraph (m) with a semicolon, inserting "and" after the semicolon, and by adding paragraph (n) to read as follows:

**§ 416.1402 Administrative actions that are initial determinations.**

* * * * *

(n) Our calculation of the amount of change in your federally administered State supplementary payment amount (i.e., a reduction, suspension, or termination) which results from a mass change, as defined in § 416.1401.

4. Section 416.1403 is amended by adding paragraphs (a)(15), (a)(16), and (b)(3) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) * * *

(15) The determination to reduce, suspend, or terminate your federally administered State supplementary payments due to a State-initiated mass change, as defined in § 416.1401, in the levels of such payments, except as provided in § 416.1402(n).

(16) Termination of Federal administration of State supplementary payments.

(b) * * *

(3) If there is a termination of Federal administration of State supplementary payments.

[FR Doc. 94–20362 Filed 8–19–94; 8:45 am]
BILLING CODE 4190–29–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 47 and 48

[TD 8561]

RINs 1545–AR38, 1545–AR94, 1545–AR95 and 1545–AS32

## Tax-Free Exports of Vaccines, Vaccine Floor Stocks Tax of 1993, and Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the export of certain vaccines and to the floor stocks tax on vaccines held on August 10, 1993. This document also contains final regulations relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel held on October 1, 1993; on diesel fuel held on January 1, 1994; and on commercial aviation fuel held on October 1, 1995. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1987 and the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). The regulations provide guidance relating to the floor stocks taxes, including guidance concerning the person liable for each tax, exceptions to the taxes, and the time for reporting and paying each tax. In addition, the regulations provide guidance to manufacturers of exported vaccines.

**DATES:** These regulations are effective August 22, 1994.

For dates of applicability, see §§ 47.2–1, 47.3–1, 48.4221–3(e), and 48.6416(b)(2)–2(b)(2).

**FOR FURTHER INFORMATION CONTACT:** Edward Madden (202) 622–4537 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Vaccines

*Background*

The Vaccine Injury Compensation Trust Fund (the Fund) compensates individuals who are injured as a result of the administration of certain vaccines. Revenue for the Fund is provided by a manufacturers tax (section 4131) on these vaccines. The tax, as originally enacted, was in effect only from 1988 through 1992, but OBRA 1993 applied the tax to vaccine sales after August 10, 1993.

OBRA 1993 also imposes a floor stocks tax, which does not appear in the Internal Revenue Code (Code), on these vaccines. The floor stocks tax is a one-time tax on taxable vaccines that were sold by the manufacturer, producer, or importer on or before August 10, 1993, on which no tax was imposed by section 4131, and that were held at the last moment of August 10, 1993, for sale or use. The rates of floor stocks tax are equal to the tax rates for sales by the manufacturer, producer, or importer.

On September 20, 1993, a notice of proposed rulemaking (PS–7–93) relating to tax-free exports of vaccine was published in the **Federal Register** (58 FR 48801).

On November 29, 1993, temporary regulations (TD 8497) relating to the vaccine floor stocks tax were published in the **Federal Register** (58 FR 62524). A notice of proposed rulemaking (PS–50–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 62558).

No comments responding to PS–7–93 were received. Written comments responding to PS–50–93 were received, but no public hearing was requested or held. After consideration of all comments, the proposed vaccine export regulations and the proposed vaccine floor stocks regulations are adopted by this Treasury decision, and the temporary regulations relating to the vaccine floor stocks tax are removed.

*Summary of Comments*

All of the comments received on PS–50–93 addressed the de minimis exception to the floor stocks tax. The proposed regulations provide that any person whose liability for tax does not exceed $1,000 is not required to report or pay the floor stocks tax. One comment requested that the de minimis amount be increased to $10,000. The de minimis exception was established for the administrative convenience of the IRS to eliminate the necessity of processing returns from persons holding small amounts of vaccines and having a small tax liability. The $1,000 de minimis amount is adequate for this purpose and the comment is, therefore, not adopted.

Another comment suggested that the exception be applied on a physician-by-physician basis so that a group practice (such as a partnership or professional corporation) would have a de minimis amount proportionate to the size of the group. As noted, increasing the amount of the de minimis exception is not consistent with its purpose. Further, if adopted, this suggestion could increase the administrative burdens of the tax. For example, allocation problems would arise if a physician is engaged in practice through more than one group (such as a partnership and a clinic or hospital). Accordingly, this suggestion is not adopted. The comment also suggested that the de minimis exception be treated as an exemption and that only amounts of tax in excess of $1,000 be reported or paid. This suggestion is inconsistent with the limited purpose of the exception—to eliminate small returns. It is, therefore, not adopted.

### Fuel Floor Stocks

*Background*

OBRA 1993 makes several changes to the Code with respect to the taxation of motor fuels. First, effective October 1, 1993, it increases the rates of excise taxes on gasoline, diesel fuel, and aviation fuel. The gasoline tax, under section 4081, increases from 14.1 cents per gallon to 18.4 cents per gallon; the

diesel fuel tax, under section 4091, increases from 20.1 cents per gallon to 24.4 cents per gallon; and the aviation fuel tax, under section 4091, increases from 17.6 cents per gallon to 21.9 cents per gallon. These new rates include the 0.1-cent-per-gallon tax that funds the Leaking Underground Storage Tank (LUST) Trust Fund. Second, effective January 1, 1994, OBRA 1993 generally moves the point of imposition of tax on diesel fuel to the terminal rack. Third, effective October 1, 1995, OBRA 1993 increases the tax on fuel used in commercial aviation by 4.3 cents per gallon.

OBRA 1993 also imposes three floor stocks taxes, which are not codified, on these fuels. The taxes are to be paid by persons holding fuel on the effective dates of the changes.

The first floor stocks tax is a one-time tax on gasoline, diesel fuel, and aviation fuel that are held at the first moment of October 1, 1993, at a point in the distribution chain where these fuels would not otherwise be subject to the increased tax rates. The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

The second floor stocks tax is a one-time tax on diesel fuel held by any person at the first moment of January 1, 1994, if (A) no tax was imposed on the fuel under section 4041(a) or 4091 as in effect on December 31, 1993, and (B) tax would have been imposed by section 4081, as amended by OBRA 1993, on any prior removal, entry, or sale of the fuel had section 4081 applied to the fuel for periods before January 1, 1994. The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

The third floor stocks tax is a one-time tax on commercial aviation fuel held by any person at the first moment of October 1, 1995, on which the LUST tax was imposed under section 4091 before October 1, 1995. The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

On November 29, 1993, temporary regulations (TD 8498) were published in the **Federal Register** (58 FR 62526). A notice of proposed rulemaking (PS–49–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 62559).

On December 27, 1993, temporary regulations (TD 8512) amending the existing temporary regulations to allow diesel fuel dyed past the terminal rack to qualify for exemption from the floor stocks tax were published in the **Federal Register** (58 FR 68304). A notice of proposed rulemaking (PS–76–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 68338). On January 31, 1994, a correction to TD 8498 was published in the **Federal Register** (59 FR 4251).

Written comments responding to these notices were received, but no public hearing was requested or held. After consideration of all the comments, the proposed floor stocks regulations are adopted by this Treasury decision and the corresponding temporary regulations are removed. The comments made with respect to the temporary and proposed regulations are discussed below.

## Summary of Comments

Three comments were received. One of the comments suggested that the requirement that diesel fuel be dyed at the time of its removal from the terminal in order to be exempt from the floor stocks tax was too restrictive and that any diesel fuel held for an exempt purpose that is eventually used for an exempt purpose should be free from floor stocks tax. This comment was addressed in TD 8512, which allows diesel fuel that was dyed past the terminal rack to qualify for exemption from the floor stocks tax. Two comments suggested that fuel held in storage tanks below the standpipe (dead storage) should not be subject to floor stocks tax. This suggestion was addressed in the preamble to the temporary regulations (TD 8498) and, for the reasons there stated, is not adopted.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these regulations is Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

*26 CFR Part 47*

Excise taxes, Reporting and recordkeeping requirements.

*26 CFR Part 48*

Excise taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I is amended as follows:

**Paragraph 1.** Part 47 is revised to read as follows:

# PART 47—FLOOR STOCKS TAXES

### Subpart A—[Reserved]

Sec.

47.1–1 through 47.1–5 [Reserved]

### Subpart B—Vaccine Floor Stocks Tax of 1993

47.2–1 Scope of this subpart B and effective date.

47.2–2 Definitions relating to the vaccine floor stocks tax.

47.2–3 Imposition of vaccine floor stocks tax.

47.2–4 De minimis exception to vaccine floor stocks tax.

47.2–5 Requirements with respect to payment and return.

### Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconcillation Act of 1993

47.3–1 Scope of this subpart C and effective date.

47.3–2 Definitions relating to the floor stocks taxes under this subpart C.

47.3–3 Imposition of the October 1, 1993, floor stocks tax on fuel held on October 1, 1993.

47.3–4 Exceptions to the October 1, 1993, floor stocks tax.

47.3–5 Requirements with respect to payment and return for the October 1, 1993, floor stocks tax.

47.3–6 Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994.

47.3–7 Exception to the January 1, 1994, floor stocks tax.

47.3–8 Requirements with respect to payment and return for the January 1, 1994, floor stocks tax.

47.3–9 Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995.

47.3–10 Exceptions to the October 1, 1995, floor stocks tax.

47.3–11 Requirements with respect to payment and return for the October 1, 1995, floor stocks tax.

**Authority:** 26 U.S.C. 7805.

Section 47.2–5 also issued under section 13421(c) of Pub. L. 103–66 (107 Stat.312, 565).

**Subpart A—[Reserved]**

**§§ 47.1–1 through 47.1–5 [Reserved]**

**Subpart B—Vaccine Floor Stocks Tax of 1993**

**§ 47.2–1 Scope of this subpart B and effective date.**

The regulations in this subpart B relate to the vaccine floor stocks tax imposed by section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66; 107 Stat. 312, 565). The tax is imposed on untaxed vaccines held at the last moment of August 10, 1993. The regulations in this subpart B describe the specific articles subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart B also provide an exception to the tax and requirements for payment of tax and filing a return reporting the tax. The regulations in this subpart B are effective on August 10, 1993.

**§ 47.2–2 Definitions relating to the vaccine floor stocks tax.**

(a) *Terms used in section 4131.* For purposes of this subpart, terms that are also used in section 4131 have the same meaning as when so used.

(b) *Other terms.* For purposes of this section—

*Act* refers to the Omnibus Budget Reconciliation Act of 1993.

*Controlled group* means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

**§ 47.2–3 Imposition of vaccine floor stocks tax.**

(a) *Vaccines subject to tax.* Section 13421(c) of the Act imposes a floor stocks tax on any taxable vaccine (as defined in section 4132(a)(1) of the Internal Revenue Code)—

(1) Which was sold by the manufacturer, producer, or importer on or before August 10, 1993;

(2) On which no tax was imposed under section 4131 (or on which such tax was imposed and subsequently credited or refunded); and

(3) Which is held at the last moment of August 10, 1993, by any person for sale or use.

(b) *Rates of tax.* The rate of floor stocks tax on each taxable vaccine is the rate of tax specified in section 4131(b)(1) of the Internal Revenue Code.

(c) *Person liable for tax.* The person liable for the floor stocks tax on any vaccine subject to tax is the person that holds the vaccine at the last moment of August 10, 1993. For purposes of the floor stocks tax, a vaccine is held at the last moment of August 10, 1993, by the person that has title to the vaccine (whether or not delivery to that person has been made) at such time, as determined under applicable local law. There is no exemption from the floor stocks tax for the United States or for State or local governments. Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax.

**§ 47.2–4 De minimis exception to vaccine floor stocks tax.**

(a) *De minimis exception*—(1) *In general.* Except as otherwise provided in this section, if the aggregate amount of floor stocks tax payable by a person does not exceed $1,000, that person is not required to report or pay the tax.

(2) *All amounts held subject to tax if threshold exceeded.* If the aggregate amount of floor stocks tax payable by a person exceeds $1,000, that person is required to report and pay the total amount of tax as determined without regard to this section.

(3) *Controlled groups.* A member of a controlled group (as defined in § 47.2–2) is not excepted from reporting and paying floor stocks tax under this section if the aggregate amount of floor stocks tax payable by all members of the controlled group exceeds $1,000.

(b) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* A holds 50 doses of DPT vaccine and 60 doses of polio vaccine on the last moment of August 10, 1993. A is not a member of a controlled group. A is not required to report and pay the floor stocks tax on any of the taxable vaccines because the aggregate amount of floor stocks tax payable by A (determined without regard to this section) does not exceed $1,000 ((50×$4.56 per dose of DPT vaccine) + (60×$0.29 per dose of polio vaccine) = $245.40).

*Example 2.* D, E, and F are members of the same controlled group. On the last moment of August 10, 1993, D holds 100 doses of DPT vaccine and 160 doses of polio vaccine; E holds 80 doses of DPT vaccine, 10 doses of MMR vaccine and 60 doses of polio vaccine; and F holds 20 doses of MMR vaccine and 10 doses of DT vaccine. Without regard to this section, D is liable for a tax of $502.40 ((100×$4.56 per dose of DPT vaccine)+(160×$0.29 per dose of polio vaccine)); E is liable for a tax of $426.60 ((80×$4.56 per dose of DPT vaccine)+(10×$4.44 per dose of MMR vaccine)+(60×$0.29 per dose of polio vaccine)); and F is liable for a tax of $89.40 ((20×$4.44 per dose of MMR vaccine)+(10 X $0.06 per dose of DT vaccine)). Because the aggregate amount of floor stocks tax payable by all members of the group ($1,018.40) exceeds $1,000, each member of the controlled group must report and pay the floor stocks tax.

**§ 47.2–5 Requirements with respect to payment and return.**

(a) *Payment of tax.* The floor stocks tax is to be paid without assessment or notice on or before February 28, 1994.

(b) *Filing of return*—(1) *Form 720.* Except as provided in § 47.2–4(a) (relating to the de minimis exception),

every person liable for the floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before February 28, 1994, and is a return for the fourth calendar quarter of 1993. A first return reporting only floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the fourth calendar quarter of 1993 for other excise taxes earlier than February 28, 1994, that person files a single Form 720 for the quarter by February 28, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

## Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

### § 47.3–1 Scope of this subpart C and effective date.

The regulations in this subpart C relate to the fuel floor stocks taxes imposed by sections 13241(h), 13243, and 13245 of the Omnibus Budget Reconciliation Act of 1993 (Act). The tax under section 13241(h) of the Act is imposed on previously taxed gasoline, diesel fuel, and aviation fuel held by any person at the first moment of October 1, 1993 (the October 1, 1993, floor stocks tax). The tax under section 13243 of the Act is imposed on untaxed diesel fuel that does not satisfy the requirements of section 4082 (as amended by section 13242 of the Act) and that is held by any person at the first moment of January 1, 1994, at a point in the distribution chain outside the bulk transfer/terminal system (the January 1, 1994, floor stocks tax). The tax under section 13245 of the Act is imposed on commercial aviation fuel on which tax was imposed under section 4091 (even if only at the Leaking Underground Storage Tank Trust Fund financing rate) before October 1, 1995, and that is held by any person at the first moment of October 1, 1995 (the October 1, 1995, floor stocks tax). The regulations in this subpart describe the specific fuels subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart also provide exceptions to tax and requirements for payment of tax and filing a return reporting tax. This subpart is effective on October 1, 1993.

### § 47.3–2 Definitions relating to the floor stocks taxes under this subpart C.

*Act* is the Omnibus Budget Reconciliation Act of 1993.

*Aviation fuel* is any liquid (other than any product taxable under section 4081) that is commonly or commercially known or sold as a fuel that is suitable for use in an aircraft.

*Commercial aviation fuel* is any aviation fuel that is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

*Controlled group* means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

*Diesel fuel* means any liquid (other than gasoline) that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or, after December 31, 1993, diesel-powered boat.

*Fuel* means gasoline, diesel fuel, and aviation fuel (including after September 30, 1995, commercial aviation fuel).

*Gasoline* means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blend stocks (as defined in § 48.4081–1(j) of this chapter).

*Person* includes each business unit that has, or is required to have, its own employer identification number.

### § 47.3–3 Imposition of the October 1, 1993, floor stocks tax on fuel held on October 1, 1993.

(a) *Fuels subject to tax.* Section 13241(h)(1) of the Act imposes a floor stocks tax on gasoline (including gasohol), diesel fuel, and aviation fuel—

(1) On which tax was imposed under section 4081 or 4091 before October 1, 1993; and

(2) That is held at the first moment of October 1, 1993, by any person.

(b) *Rate of tax.* The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any fuel subject to the October 1, 1993, floor stocks tax is the person that holds the fuel at the first moment of October 1, 1993. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

### § 47.3–4 Exceptions to the October 1, 1993, floor stocks tax.

(a) *Exception for fuel held for an exempt use*—(1) *Gasoline.* The October

1, 1993, floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules in paragraphs (a)(1) (i) through (iii) of this section apply:

(i) An exempt use, with respect to gasoline, is any use of gasoline (other than use in producing gasohol) that is described in section 6420, 6421, or 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4081. Thus, for example, exempt use of gasoline includes use on a farm for farming purposes; use in an off-highway business use; use in certain intercity, local, and school buses; exclusive use by a State or local government or nonprofit educational organization; and use in commercial aircraft.

(ii) Gasoline is held exclusively for an exempt use only if the person that holds gasoline at the first moment of October 1, 1993, actually uses the gasoline in an exempt use.

(iii) Gasoline is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station for sale to a farmer for use on a farm for farming purposes is not exempt from the October 1, 1993, floor stocks tax. However, the farmer would be eligible to claim an income tax credit for an amount equal to the tax under sections 34 and 6420.

(2) *Diesel fuel.* The October 1, 1993, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules in paragraphs (a)(2) (i) through (iv) of this section apply:

(i) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than use in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the October 1, 1993, floor stocks tax under this paragraph (a)(2) unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(l)(3) as amended by section 13241 of the Act.

(iii) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of October 1, 1993, actually uses the diesel fuel in an exempt use.

(iv) Diesel fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer for sale to a construction company for use in the construction company's off-road machinery is not exempt from the October 1, 1993, floor stocks tax. However, the construction company would be eligible to claim a credit or payment equal to the tax under section 6427.

(3) *Aviation fuel.* The October 1, 1993, floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. In determining whether aviation fuel is held exclusively for an exempt use, the following rules in paragraphs (a)(3) (i) through (iii) of this section apply:

(i) An exempt use, with respect to aviation fuel, is any use of aviation fuel that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt use of aviation fuel includes any use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use other than use as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)).

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of October 1, 1993, actually uses the aviation fuel in an exempt use.

(iii) Aviation fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed-base operator for sale to an airline for use in commercial aviation is not exempt from the October 1, 1993, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for gasoline or diesel fuel held in vehicle fuel supply tank.* The October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle (as defined in § 48.4041–8(c) of this chapter) or motorboat. This exception does not apply to fuel held in the fuel supply tank of a train or an aircraft.

(c) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1993, floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of October 1, 1993, if the aggregate amount of gasoline held by that person at that moment does not exceed 4,000 gallons; and

(ii) Diesel fuel or aviation fuel that a person holds at the first moment of October 1, 1993, if the aggregate amount of diesel fuel or the aggregate amount of aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules*—(i) *Coordination with other exemptions.* In determining the aggregate amount of gasoline, diesel fuel, or aviation fuel held by a person at the first moment of October 1, 1993, there is excluded the amount of gasoline, diesel fuel, or aviation fuel exempt from the October 1, 1993, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for exempt uses), or paragraph (b) of this section (relating to gasoline and diesel fuel held in the fuel supply tank of a motor vehicle or motorboat).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1993, floor stocks tax applies to all amounts of gasoline, diesel fuel, or aviation fuel (as the case may be) held by a person (and not exempt from tax under paragraph (a) or (b) of this section) if the aggregate amount of fuel held by the person at the first moment of October 1, 1993, exceeds 4,000 gallons in the case of gasoline or 2,000 gallons in the case of diesel fuel or aviation fuel.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2) holds more than 4,000 gallons of gasoline if the aggregate amount of all gasoline held by all members of the controlled group exceeds 4,000 gallons. A member of a controlled group holds more than 2,000 gallons of diesel fuel or aviation fuel if the aggregate amount of all diesel fuel or aviation fuel, as the case may be, held by all members of the controlled group exceeds 2,000 gallons.

(3) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* On October 1, 1993, A holds 10,000 gallons of gasoline, 6,000 gallons of

which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in A's highway vehicles. A is not a member of a controlled group. A is not liable for the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by A for uses other than exempt uses does not exceed 4,000 gallons.

*Example 2.* On October 1, 1993, B holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. B is not a member of a controlled group. B is not liable for the floor stocks tax on diesel fuel because B's holdings of diesel fuel do not exceed 2,000 gallons. B is not liable for the floor stocks tax on gasoline because B's holdings of gasoline do not exceed 4,000 gallons.

*Example 3.* On October 1, 1993, C holds 4,100 gallons of gasoline for resale at a service station. C is liable for a floor stocks tax of $176.30 (4,100 X $.043) on that gasoline.

**§ 47.3–5 Requirements with respect to payment and return for the October 1, 1993, floor stocks tax.**

(a) *Payment of tax.* The October 1, 1993, floor stocks tax is to be paid without assessment or notice on or before November 30, 1993.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1993, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before November 30, 1993, and is a return for the third calendar quarter of 1993. A first return reporting only the October 1, 1993, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the third calendar quarter of 1993 for other excise taxes earlier than November 30, 1993, that person files a single Form 720 for the quarter on or before November 30, 1993. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

**§ 47.3–6 Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994.**

(a) *Fuel subject to tax.* Section 13243 of the Act imposes a floor stocks tax on diesel fuel held at the first moment of January 1, 1994, by any person if—

(1) No tax was imposed on the diesel fuel under section 4041(a) or 4091 as in effect on December 31, 1993; and

(2) Tax would have been imposed by section 4081, as amended by section 13242 of the Act, on any prior removal, entry, or sale of the diesel fuel had section 4081 applied to the diesel fuel for periods before January 1, 1994.

(b) *Rate of tax.* The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any diesel fuel subject to the January 1, 1994, floor stocks tax is the wholesale distributor or other registered producer, recreational boat operator, or other person that holds the fuel at the first moment of January 1, 1994. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

**§ 47.3–7 Exception to the January 1, 1994, floor stocks tax.**

(a) *In general.* The January 1, 1994, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(1) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 (as in effect on January 1, 1994) and that would entitle the ultimate purchaser to a credit or payment equal to any tax imposed by section 4081 (as in effect on such date). Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(2) Diesel fuel held for use in a diesel-powered train is not exempt from the January 1, 1994, floor stocks tax under paragraph (a)(1) of this section unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. For circumstances in which diesel fuel held for use in a diesel-powered train may be exempt from the January 1, 1994, floor stocks tax, see paragraph (b) of this section (relating to the exemption for dyed fuel) and § 47.3–6(a)(1), which exempts fuel that was previously taxed under section 4041(a) or 4091 (as in effect on December 31, 1993).

(3) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of January 1, 1994, actually uses the diesel fuel in an exempt use.

(4) Diesel fuel is not held exclusively for an exempt use if, at the first moment of January 1, 1994, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, except in the case of dyed fuel described in paragraph (b) of this section, diesel fuel held by a heating oil retailer for sale for use as home heating oil is not exempt from the January 1, 1994, floor stocks tax. However, a homeowner who uses the fuel for heating purposes would be eligible to claim a credit or may be eligible for a payment equal to the tax under section 6427.

(b) *Exception for dyed fuel.* The January 1, 1994, floor stocks tax does not apply to diesel fuel that satisfies the dyeing requirements of § 48.4082–1T(b) of this chapter by March 31, 1994, or by the time the fuel is sold by the person holding the fuel at the first moment of January 1, 1994, whichever is earlier. Thus, for example, diesel fuel held by a heating oil retailer for sale for use as home heating oil is exempt from the January 1, 1994, floor stocks tax if the retailer or another person has dyed the fuel and the fuel satisfies the requirements of § 48.4082–1T(b) of this chapter.

**§ 47.3–8 Requirements with respect to payment and return for the January 1, 1994, floor stocks tax.**

(a) *Payment of tax.* The January 1, 1994, floor stocks tax is to be paid without assessment or notice on or before July 31, 1994.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the January 1, 1994, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before July 31, 1994, and is a return for the second calendar quarter of 1994. A first return reporting only January 1, 1994, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the second calendar quarter of 1994 for other excise taxes on or before

August 31, 1994, that person files a single Form 720 for the quarter on or before August 31, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

**§ 47.3–9 Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995.**

(a) *Fuel subject to tax.* Section 13245 of the Act imposes a floor stocks tax on commercial aviation fuel on which tax was imposed under section 4091 before October 1, 1995, and which is held on the first moment of that date by any person. Tax is imposed under section 4091 even if imposed only at the Leaking Underground Storage Tank Trust Fund financing rate under that section.

(b) *Rate of tax.* The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any commercial aviation fuel subject to the October 1, 1995, floor stocks tax is the person that holds the commercial aviation fuel at the first moment of October 1, 1995. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

**§ 47.3–10 Exceptions to the October 1, 1995, floor stocks tax.**

(a) *Exception for commercial aviation fuel held for use as supplies for vessels or aircraft.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel held exclusively for use as supplies for vessels or aircraft within the meaning of section 4221(d)(3). In determining whether commercial aviation fuel is held exclusively for such use, the following rules in paragraphs (a) (1) and (2) of this section apply:

(1) Commercial aviation fuel is held exclusively for use as supplies for vessels or aircraft only if the person that holds the commercial aviation fuel at the first moment of October 1, 1995, actually uses the aviation fuel in that exempt use.

(2) Commercial aviation fuel is not held exclusively for use as supplies for vessels or aircraft if, at the first moment of October 1, 1995, the commercial aviation fuel is held for resale (including resale to a person that will use the aviation fuel as supplies for vessels or aircraft). Thus, for example, commercial aviation fuel held by a fixed base operator for sale to an airline for use in foreign trade is not exempt from the October 1, 1995, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel that a person holds at the first moment of October 1, 1995, if the aggregate amount of commercial aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules relating to the 2,000 gallon exception*—(i) *Coordination with other exemptions.* In determining the aggregate amount of commercial aviation fuel held by a person at the first moment of October 1, 1995, there is to be excluded the amount of commercial aviation fuel exempt from the October 1, 1995, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for an exempt use).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1995, floor stocks tax applies to all amounts of commercial aviation fuel held by a person (and not exempt from tax under paragraph (a) of this section) if the aggregate amount of commercial aviation fuel held by the person at the first moment of October 1, 1995, exceeds 2,000 gallons.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2) holds more than 2,000 gallons of commercial aviation fuel if the aggregate amount of all commercial aviation fuel held by all members of the controlled group exceeds 2,000 gallons.

(3) *Example.* The following example illustrates the rules of this paragraph (b):

*Example.* D, E, and F are members of the same controlled group. On October 1, 1995, D holds 2,000 gallons of commercial aviation fuel. E holds 1,500 gallons of commercial aviation fuel, and F holds 500 gallons of commercial aviation fuel. None of the commercial aviation fuel is held for an exempt use. Because the aggregate amount held by all members of the group is 4,000 gallons, which exceeds 2,000 gallons, all commercial aviation fuel held by each member is subject to the floor stocks tax. Thus, D is liable for tax of $86.00 (2,000×$.043), E is liable for tax of $64.50 (1,500×$.043), and F is liable for tax of $21.50 (500×$.043).

**§ 47.3–11 Requirements with respect to payment and return for the October 1, 1995, floor stocks tax.**

(a) *Payment of tax.* The October 1, 1995, floor stocks tax is to be paid without assessment or notice on or before April 30, 1996.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1995, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before April 30, 1996, and is a return for the first calendar quarter of 1996. A first return reporting only October 1, 1995, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the first calendar quarter of 1996 for other excise taxes on or before May 31, 1996, that person files a single Form 720 for the quarter on or before May 31, 1996. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

## PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

**Par. 2.** The authority citation for part 48 is amended by adding the following entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 48.4221–3(e) also issued under 26 U.S.C. 4221(a).

Section 48.6416(b)(2)–2(b) also issued under 26 U.S.C. 6416(b).

* * * * *

**Par. 3.** Section 48.4221–3 is amended by adding paragraph (e) to read as follows:

**§ 48.4221–3 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.**

* * * * *

(e) *Vaccines.* The exemption provided by section 4221(a)(2) applies after August 10, 1993, to the tax imposed on vaccines by section 4131, but only if—

(1) The vaccine is sold by the manufacturer after August 10, 1993; and

(2) In the case of vaccine sold to, or sold for resale to, the United States or any of its agencies or instrumentalities, the United States or such agency or instrumentality notifies the manufacturer that the vaccine is intended for uses other than the vaccination of persons described in 42 U.S.C. 300aa–11(c)(1)(B)(i)(II) (relating to certain U.S. citizens who are vaccinated outside the United States).

**Par. 4.** Section 48.6416(b)(2)–2 is amended by:

1. Redesignating the text of paragraph (b) following the heading as paragraph (b)(1).

2. Adding a heading to paragraph (b)(1).

3. Revising the first sentence of paragraph (b)(1).

4. Adding paragraph (b)(2).

5. The revisions and additions read as follows:

**§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.**

* * * * *

(b) *Exportation of tax-paid articles*—(1) *In general.* Subject to the limitations of section 6416(b)(2) and paragraph (b)(2) of this section, tax paid under chapter 31 or 32 on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(A) if the article is exported by any person. * * *

(2) *Rule for exportation of vaccines.* Paragraph (b)(1) of this section applies to tax paid under section 4131 on the sale of a vaccine, but only if the sale by the manufacturer occurs after August 10, 1993, and, in the case of vaccine sold to the United States or any of its agencies or instrumentalities, the condition of § 48.4221–3(e)(2) is satisfied.

* * * * *

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

Approved: July 21, 1994.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[TX–39–1–6507; FRL–5022–5]**

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking action to approve the Texas Natural Resource Conservation Commission (TNRCC) Inspection and Maintenance (I/M) State Implementation Plan (SIP), which includes a SIP narrative entitled "Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution—Inspection/Maintenance SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur, and Houston/Galveston Ozone Nonattainment Areas," and Regulation IV, 31 TAC 114.3, entitled "Vehicle Emissions Inspection and Maintenance Program," as a revision to the Texas SIP for ozone in all four nonattainment areas and carbon monoxide in El Paso. On November 12, 1993, and on March 9, 1994, Texas submitted SIP revision requests to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act as amended in 1990 (CAA), 42 U.S.C. 7511a(b)(4) and 7511a(c)(3) and Federal I/M rule 40 CFR Part 51 subpart S. These SIP revisions will require vehicle owners to comply with the Texas I/M program in the four Texas ozone nonattainment areas classified as moderate or worse which includes El Paso also classified as nonattainment area for carbon monoxide. This revision applies to the Texas counties of Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller. On May 18, 1994 (59 FR 25867), the EPA published a Notice of Proposed Rulemaking (NPR) for the State of Texas. The NPR proposed approval of the Texas I/M SIP submitted by the State. No public comments were received on the NPR; therefore, the EPA is publishing this final action.

**EFFECTIVE DATE:** This rule will become effective on September 21, 1994.

**ADDRESSES:** Copies of the State's submittals and the EPA's technical support document (TSD) are available for public review at U.S. Environmental Protection Agency Region 6, (6T–AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Also, Texas' submittal is available at the TNRCC, Mobile Source Division, I/M Section, P.O. Box 13087, Austin, Texas 78711–3087. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

In addition, a copy of today's revision to the Texas SIP is also available for inspection at: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** James F. Davis at (214) 655–7584.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Clean Air Act, as amended in 1990, requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level.

In addition, all ozone nonattainment areas classified as moderate or worse must implement a basic or an enhanced I/M program depending upon its classification, regardless of previous requirements. In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the CAA to have an I/M program. Ozone nonattainment areas classified as "serious" or worse with populations of 200,000 or more, and CO nonattainment areas with design values above 12.7 parts per million (ppm.) and populations of 200,000 or more, and metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region were required to meet EPA guidance for enhanced I/M programs.

The EPA has designated four areas as ozone nonattainment in the State of Texas. The Houston/Galveston ozone nonattainment area is classified as severe and contains the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The Beaumont/Port Arthur ozone nonattainment area is classified as serious and contains the following three counties: Hardin, Jefferson, and Orange. The 1980 population of the Beaumont/Port Arthur area was less than 200,000. The El Paso ozone nonattainment area is classified as serious and contains the county of El Paso. The Dallas/Fort Worth ozone nonattainment area is classified as moderate and contains the following four counties: Collin, Dallas, Denton, and Tarrant. The designations for ozone were published in the Federal Register (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR sections 81.300–81.437. In addition, a

segment of El Paso Texas has been designated nonattainment for carbon monoxide (CO) and classified as moderate with a design value below 12.7 ppm., under sections 107(d)(4)(A) and 186(a) of the CAA. See 56 FR 56694 (November 6, 1991) and 57 FR 13498 and 13529 (April 16, 1992). Based on these nonattainment designations and populations, basic I/M programs are required in the Beaumont/Port Arthur and Dallas/Fort Worth urbanized areas, while enhanced I/M programs are required in the El Paso and Houston/Galveston urbanized areas.

**Response to Comments**

On May 18, 1994 (59 FR 25867), the EPA published a Notice of Proposed Rulemaking (NPR) for the State of Texas. The NPR proposed approval of the Texas I/M SIP submitted by the State. No public comments were received on the NPR.

**Final Action**

By this action, the EPA is approving this submittal. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA regulations and finds it to be acceptable. The rationale for the EPA's action is explained in the NPR and will not be restated here.

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

As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures published in the FR on January 19, 1989 (54 FR 2214), and revisions to these procedures issued on October 4, 1993, in an EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables."

**Regulatory Process**

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

**Note**—Incorporation by reference of the SIP for the State of Texas was approved by the Director of the FR on July 1, 1982.

Dated: July 19, 1994.

**Joe D. Winkle,**

*Acting Regional Administrator.*

40 CFR Part 52 is amended as follows:

## PART 52—[AMENDED]

1. The Authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(87) to read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(c) * * *

(87) A revision to the Texas SIP to include revisions to Texas Regulation IV, 31 TAC § 114.3—Vehicle Emissions Inspection and Maintenance Program, adopted by the State on November 10, 1993, and February 16, 1994, regulations effective December 8, 1993, and revisions to Texas Department of Transportation, Chapter 17. Vehicle Titles and Registration—Vehicle Emissions Verification System, 43 TAC § 17.80, adopted by the State on October 28, 1993, effective November 22, 1993, and submitted by the Governor by cover letters dated November 12, 1993 and March 9, 1994.

(i) Incorporation by reference.

(A) House Bill 1969 an act relating to motor vehicle registration, inspections and providing penalties amending:

(*1*) Sections 382.037 and 382.038 of the Texas Health and Safety Code;

(*2*) Section 2 Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a–2, Vernon's Texas Civil Statutes);

(*3*) Title 116, Articles 6675b–4, 6675b–4A, and 6675b–4B;

(*4*) Section 141(d), and section 142(h), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Civil Statutes);

(*5*) Section 4.202, County Road and Bridge Act (Article 6702–1, Vernon's Texas Civil Statutes) signed by the Governor on June 8, 1993, and effective August 30, 1993.

(B) Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act, sections 382.017, 382.037, 382.038, and 382.039 effective September 1, 1991.

(C) Revisions to Texas Regulation IV, 31 TAC § 114.3—Vehicle Emissions Inspection and Maintenance Program, effective December 8, 1993.

(D) Order No. 93–23, as adopted November 10, 1993, and Order No. 94–02 as adopted February 16, 1994.

(E) Texas Civil Statutes, Articles 6675a–1 to 6675b–2 and 6687–1. (Vernon 1993).

(F) Revisions to Texas Department of Transportation, Chapter 17. Vehicle Titles and Registration—Vehicle Emissions Verification System, 43 TAC § 17.80, effective November 22, 1993.

(ii) Additional materials.

(A) SIP narrative plan entitled "Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution—Inspection/Maintenance SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur, and Houston/Galveston Ozone Nonattainment Areas," submitted to the EPA on November 12, 1993, and on March 9, 1994 addressing by section: 8(a)(1) Applicability, 8(a)(2) Adequate Tools and Resources, 8(a)(3) I/M Performance Standards, 8(a)(4) Network Type and Program Evaluation, 8(a)(5) Test Frequency and Convenience, 8(a)(6) Vehicle coverage, 8(a)(7) Test Procedures and Standards and Test Equipment, 8(a)(8) Quality

Control, 8(a)(9) Quality Assurance, 8(a)(10) Waivers and Compliance Via Diagnostic Inspection, 8(a)(11) Motorist Compliance Enforcement, 8(a)(12) Motorist Compliance Enforcement Program Oversight, 8(a)(13) Enforcement Against Contractors, Stations and Inspectors, 8(a)(14) Compliance with Recall Notices, 8(a)(15) Data Collection, 8(a)(16) Data Analysis and Reporting, 8(a)(17) Inspector Training and Licensing or Certification, 8(a)(18) Public Information, 8(a)(19) Consumer Protection Provisions, 8(a)(20) Improving Repair Effectiveness, 8(a)(21) On-Road Testing, 8(a)(22) State Implementation Plan Submission and Appendices.

(B) Letter dated May 4, 1994, from John Hall, Chairman of the Texas Natural Resource Conservation Commission to the EPA, clarifying the State's intent regarding its Executive Director's exemption policy and repair effectiveness program.

[FR Doc. 94–20475 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 350

[OPPTS–400089; FRL–4907–6]

## Notice of Change of Address for Submission of Trade Secrecy Claims and Petitions Requesting Disclosure of Chemical Identities Under the Emergency Planning and Community Right-to-Know Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This notice announces the new mailing address to be used by facilities when submitting trade secrecy claims to EPA under sections 303(d)(2) and (d)(3), 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (also known as Title III). The new address is also to be used by petitioners when submitting petitions requesting disclosure of chemical identities claimed trade secret by facilities on reports filed under sections 303(d)(2) and (d)(3), 311, 312, and 313 of Title III.

**DATES:** This change is effective August 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Doug Sellers, Project Officer, Title III Reporting Center, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–3587.

**SUPPLEMENTARY INFORMATION:** Beginning immediately, the mailing address for submitting the above-mentioned Emergency Planning and Community Right-to-Know information to EPA will change from Title III Reporting Center, Environmental Protection Agency, P.O. Box 23779, Washington, DC 20026–3779, to: EPCRA Reporting Center, Environmental Protection Agency, P.O Box 3348, Merrifield, VA 22116–3348, Attn:——. The attention line should indicate whether the enclosed information is subject to section 303, 311, 312, or 313. This change in mailing is being made to facilitate the receipt and processing of the above-mentioned information by EPA.

Dated: August 15, 1994.

**Linda A. Travers,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR part 350 is amended as follows:

### PART 350—[AMENDED]

1. The authority citation for part 350 continues to read as follows:

**Authority:** U.S.C. 11042 and 11043.

2. Section 350.16 is revised to read as follows:

**§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.**

All claims of trade secrecy under sections 303(d)(2) and (d)(3), 311, 312, and 313 and all public petitions requesting disclosure of chemical identities claimed as trade secret should be sent to the following address: EPCRA Reporting Center, Environmental Protection Agency, P.O. Box 3348, Merrifield, VA 22116–3348, Attn:——.

[FR Doc. 94–20555 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 372

[OPPTS–400088; FRL–4904–6]

## Hydrogen Sulfide; Methyl Mercaptan; Toxic Chemicals Release Reporting; Community Right-to-Know; Stay of Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Administrative stay.

**SUMMARY:** EPA is today announcing an Administrative Stay of the Emergency Planning and Community Right-to-Know (EPCRA) section 313 toxic chemical release reporting requirements for hydrogen sulfide (CAS No. 7783–06–4) and methyl mercaptan (CAS No. 74–93–1). These two chemicals were added to the 40 CFR part 372 Subpart D list of toxic chemicals in a final rule published in the **Federal Register** of December 1, 1993. The effect of this stay is to defer reporting on these two chemicals while the Agency reviews new data and information made available subsequent to the promulgation of the final rule. The Agency will make this information available for public comment, in a forthcoming **Federal Register** notice and will also at that time seek public comment on whether the Agency should propose to delete one or both of these chemicals from the EPCRA section 313 list of toxic chemicals. After evaluating the information and public comments the Agency will either propose to delete one or both of these chemicals or will reaffirm its original findings and dissolve this Administrative Stay. Today's action has no effect on any aspect of EPCRA section 313 toxic chemical release reporting other than hydrogen sulfide and methyl mercaptan.

**EFFECTIVE DATE:** August 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Project Manager, 202–260–9592, for specific information on this action. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11023 (EPCRA) requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list.

## II. Background

In the **Federal Register** of December 1, 1993 (58 FR 63500), the Agency published a final rule adding 21 chemicals and 2 chemical categories to the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 list of toxic chemicals. The December 1993 **Federal Register** document was a result of a petition submitted to the Agency by the Natural Resources Defense Council and the Governor of New York. The petition asked the Agency to add 80 chemicals and 2 chemical categories to the EPCRA section 313 list of toxic chemicals. EPA proposed to grant this petition in part in a notice of proposed rulemaking (NPRM) published in the **Federal Register** of September 8, 1992 (57 FR 41020). In the final rule, EPA added to the EPCRA section 313 list of toxic chemicals 21 chemicals and 2 chemical categories. Included among the 21 chemicals and 2 chemical categories in the December 1993 final rule were hydrogen sulfide and methyl mercaptan. The Agency found that hydrogen sulfide met the section 313(d)(2)(B) criteria for cancer or other chronic human toxicity and the section 313(d)(2)(C) criteria for environmental toxicity. EPA found that methyl mercaptan met the section 313(d)(2)(B) criteria for cancer or other chronic human toxicity.

## III. Basis for Administrative Stay

### *A. Overview*

Since the promulgation of the final rule adding hydrogen sulfide and methyl mercaptan to the list of toxic chemicals, additional information concerning these chemicals has been brought to the Agency's attention. The Agency has also learned that some members of the regulated community are concerned that the basis for the Agency's final action on these chemicals was inadequately described in the rulemaking record. Furthermore, these members of the regulated community have charged that the Agency violated various requirements of the Administrative Procedure Act in promulgating the final listings of hydrogen sulfide and methyl mercaptan. These issues are summarized below. The Agency feels that it is important and appropriate to administratively stay the effectiveness of the listing of these two chemicals while giving the public an opportunity to comment on these issues and the additional information, as well as to comment on whether the Agency's initial determination that both hydrogen sulfide and methyl mercaptan satisfy the section 313(d) criteria for addition to the list of toxic chemicals.

To that end, in conjunction with this Administrative Stay, the Agency will be issuing a forthcoming **Federal Register** notice which will seek comment on the Agency's initial determination for these two chemicals, the additional information which has been brought to the Agency's attention, procedural issues concerning the initial final rule, and generally, comments (and any supporting data) on whether the Agency should either propose to delete one or both of the chemicals or affirm its initial determination and dissolve today's Administrative Stay.

Under the final rule, reporting for hydrogen sulfide and methyl mercaptan are required beginning with activities during the 1994 calendar year, with the first reports due on July 1, 1995. Because of the controversy surrounding the listing of these two chemicals and the decision to issue this Administrative Stay, EPA finds it unnecessary and inappropriate to subject facilities, some of whom may be subject to section 313 reporting for the first time because of the listing of hydrogen sulfide or methyl mercaptan, to the burden of collecting release information and preparing to file Toxic Release Inventory (TRI) Form R reports for the 1994 reporting year. Therefore, pending a decision by the Agency of whether to propose to delete one or both of the chemicals or to affirm its final rule determination, the effectiveness of the listing of these two chemicals on the list of toxic chemicals is administratively stayed. EPA's decision will be made promptly after consideration of public comment submitted on the pending **Federal Register** notice.

### *B. Substantive and Procedural Issues Surrounding Final EPCRA Section 313 Listing*

Although the Agency will soon be issuing a separate **Federal Register** notice and seeking public comment, the following is a brief summary of the issues and new information related to hydrogen sulfide and methyl mercaptan which support this Administrative Stay. In addition, a brief discussion of the use of exposure analysis under section 313 listing determinations also follows. This is another issue the Agency will be presenting in the upcoming **Federal Register** notice.

1. *Hydrogen sulfide.* Concern has been expressed that the Agency shifted its basis for adding hydrogen sulfide to the EPCRA section 313 list between the NPRM and the final rule. EPA proposed to list hydrogen sulfide because it exhibited chronic human toxic effects, specifically citing respiratory effects. In the final rule, the Agency agreed with commenters who argued that some of the respiratory effects cited in the proposal (inflammation, edema, cellular necrosis, hyperplasia, and exfoliation) were better characterized as acute effects than as chronic effects. The Agency nonetheless listed hydrogen sulfide for chronic effects because the observed neurotoxic effects, such as insomnia, anxiety, perceptual ability and cognitive impairments were chronic in nature. Although the statutory basis for the determination did not change, the Agency cited chronic neurotoxic effects in the final rule and chronic respiratory effects in the NPRM. EPA recognizes that, although its ultimate finding remained unchanged in the final rule, interested parties may disagree with the Agency's position that the information on neurotoxicity supports a finding under section 313(d)(2)(B). EPA believes good cause exists to issue this Administrative Stay to allow parties time to prepare and submit comment and information on this point. As noted earlier, the pending **Federal Register** notice will provide the mechanism for submitting any comments and relevant information.

2. *Methyl mercaptan.* As with hydrogen sulfide, concerns have been raised about the basis for listing methyl mercaptan as discussed in the NPRM and in the final rule. EPA proposed to list methyl mercaptan because scientific evidence showed that it exhibited chronic human toxicity effects, specifically citing neurotoxicity. The Agency affirmed this finding in the final rule. Since the publication of the final rule, however, it has come to the Agency's attention that one of the scientific sources relied upon by the Agency in making this determination may have been inaccurately or incompletely summarized from the original source.

In reviewing the available information for methyl mercaptan, EPA relied on Sandmeyer, "Organic Sulfur Compounds," in Patty's Industrial Hygiene and Toxicology handbook, a common chemical reference work (Ref. 2). Sandmeyer, in turn, appears to have relied on another work by Kvartovkina and Moerson, (Ref. 1), a 1974 work published in Russian. When translated (a translation of the article will be provided as part of the record for the forthcoming **Federal Register** notice), there are a number of additional factors and limitations which may diminish the usefulness of this study for purposes of EPCRA section 313 listing determinations. For example, the findings in the original study were made, collectively, for a number of chemicals, one of which was methyl

mercaptan. These potential translation and summary problems were not presented to EPA during the public comment period, nor was the Agency independently aware of the original Russian source. Given the Agency's longstanding intent to base its decisions on sound science and the potential problems posed by the above information, EPA believes good cause exists to issue this Administrative Stay to allow parties time to review the full information and prepare and submit comment on this point through the pending **Federal Register** notice.

3. *Analysis of exposure to hydrogen sulfide and methyl mercaptan.* Several representatives of the regulated community have expressed concern that, in listing hydrogen sulfide and methyl mercaptan, EPA was unclear in its application of the statutory criteria. Among other things, charges have been made that EPA's decision not to include evidence of exposure in deciding to list hydrogen sulfide and methyl mercaptan on the basis of chronic human toxicity was inconsistent with past Agency practice. These charges raise important and potentially far reaching issues of the Agency's interpretation of its mandate under the statute.

EPA does not agree that it has inconsistently approached the issue of the use of exposure analysis in EPCRA section 313 listings. However, many members of the regulated community have expressed dissatisfaction, alleging that the Agency has neither consistently or correctly addressed the issue of exposure. The Agency believes that a consistent approach to the EPCRA section 313 listing process is both necessary and important and that, given the charges of inconsistency with respect to exposure analysis, the public deserves an opportunity to be presented with further clarification of the Agency's position on this critical issue. A more complete discussion of this issue will be provided in the pending **Federal Register** notice.

4. *Legal authority.* As described above, the Agency believes that this Administrative Stay is appropriate and in the interests of justice, given the allegations of procedural and substantive deficiencies surrounding the Agency's listing of these two chemicals, and the resulting controversy and confusion in the regulated community. Although the Agency does not regard today's action as a rule, were it to be viewed as a rule, the Agency believes that there is good cause for issuing it without prior notice and opportunity for comment and for making it immediately effective. Under section 313(a), facilities face a current and ongoing obligation to collect information about releases of hydrogen sulfide and methyl mercaptan. Such activities are potentially quite burdensome, particularly for any facility made subject to section 313 reporting requirements for the first time because of the listing of these two chemicals. Until such time as the issues described in this document are resolved, EPA believes that today's Administrative Stay is necessary. As stated above, EPA will be issuing a notice in the **Federal Register** to begin addressing these issues and will move with dispatch toward final resolution of the status of these two chemicals.

In addition, this Administrative Stay is authorized by 5 U.S.C. section 705, which provides that an agency may postpone the effective date of action taken by it when justice so requires, pending judicial review. No petition for review has been formally filed as of this date with respect to the listing of hydrogen sulfide and methyl mercaptan. However, both the Chemical Manufacturers Association and the American Forest and Paper Association have told the Agency that unless administrative action is taken to resolve the issues outlined in today's document, a prompt legal challenge will be brought. These two organizations represent the interests of a large portion of the facilities subject to section 313, including those affected by the listing of hydrogen sulfide and methyl mercaptan. The Agency believes that rather than going through costly and potentially protracted litigation, an Administrative Stay coupled with a **Federal Register** notice and opportunity to comment is both consistent with the goal of the TRI program to involve the public in the resolution of important issues and clearly in the interests of justice.

## IV. References

1. Kvartovkina, L. K. and Moerson, E. A. "Problems of Hygiene in the Production of Some Organic Sulfur Components." Tezisy Dokl. Nauchn. Sess. Khim-Teknol Org. Soedin. Sery Sernistykh Neftei, 13, 81 (1974).

2. Sandmeyer, E. E. "Organic Sulfur Compounds," in Patty's Industrial Hygiene and Toxicology, 3rd Revised Edition. Vol. 2A; "Toxicology." Eds. G. D. Clayton and F. E. Clayton. New York: John Wiley and Sons. pp. 2063–2070 (1981).

## V. Effective Date of Administrative Stay

This Administrative Stay, which applies only to the listing of hydrogen sulfide and methyl mercaptan on the EPCRA section 313 list of toxic chemicals is effective August 22, 1994.

## VI. Paperwork Reduction Act

There are no information collection requirements associated with this action.

## List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: August 11, 1994.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 372 is amended as follows:

## PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 11023 and 11048.

## § 372.65 [Amended]

2. Section 372.65 is amended by staying the hydrogen sulfide and methyl mercaptan entries and all related dates under paragraph (a) and under paragraph (b), staying the entries for CAS Nos. 74–93–1 and 7783–06–04 and all related dates.

[FR Doc. 94–20556 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 435 and 436

[MB–001–F]

RIN 0938–AA58

## Medicaid Program; Eligibility and Coverage Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule withdraws regulations setting forth a mandatory budgetary method for determining financial eligibility for individuals who are not receiving or deemed to be receiving Federal cash assistance but whose financial eligibility for Medicaid is being determined through the application of financial criteria of the Aid to Families with Dependent Children (AFDC) program. These regulations were previously issued as part of a final rule with comment period originally published on January 19, 1993, and were to be effective October 18, 1994.

This final rule also makes conforming technical changes, as a result of this withdrawal, to the remainder of the January 19, 1993, final rule and reaffirms the August 18, 1994, effective date of this remaining part.

These changes are being made as a result of consideration of public comments received.

**EFFECTIVE DATE:** August 18, 1994.

**FOR FURTHER INFORMATION CONTACT:** Marinos Svolos, (410) 966–4451.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 19, 1993 (58 FR 4931), we published in the **Federal Register** a final rule with comment period that amended the requirements for coverage of certain groups of individuals under Medicaid and the requirements for determining Medicaid eligibility. Because the new administration wanted to fully review the policies in these regulations, on February 19, 1993, we published a notice in the **Federal Register** (58 FR 9120) delaying the effective dates and compliance dates of the final rule with comment period for 6 months. These dates were extended for two additional 6-month periods in subsequent notices published in the **Federal Register** on August 23, 1993 (58 FR 44457) and February 18, 1994 (59 FR 8138).

These regulations incorporated into the Medicaid regulations substantive changes made in the composition of eligibility groups of individuals and in the criteria used to determine their financial eligibility under Medicaid. The substantive changes were initially made by the Omnibus Budget Reconciliation Act of 1981 (OBRA '81), Public Law 97–35, and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, and further amended by the Deficit Reduction Act of 1984 (DRA), Public Law 98–369; the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272; the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509; the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93; the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203; the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360; the Family Support Act of 1988, Public Law 100–485; the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239; and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508. In addition, the document contained changes made as a result of administrative decisions to improve program administration and efficiency.

Basically, the January 1993 rule had two parts with different effective dates. The first part codified a number of statutory changes dating as far back as 1981. This part was classified as a final rule. As extended by the subsequent notices to the January 1993 publication, the effective date for these regulations is August 18, 1994.

The second part of the January 1993 rule set forth a mandated budgeting method for determining the financial eligibility of individuals who are not receiving or deemed to be receiving Federal cash assistance but whose financial eligibility for Medicaid is being determined through application of the financial criteria under the Aid to Families with Dependent Children (AFDC) program (referred to as "AFDC-related non-cash assistance individuals"). This part was classified as a final rule with comment period. As extended by the subsequent notices to the January 1993 rule, the effective date for this part is October 18, 1994.

The budgetary method set forth in the regulations was developed to clarify contradictory provisions in the Social Security Act (the Act) that had resulted in litigation. Basically, title XIX of the Act (section 1902(a)(10)) requires that the methods of the Federal cash assistance program most closely related to the individual's status be used to determine income and resources for purposes of Medicaid eligibility. At the same time, title XIX (section 1902(a)(17)(D)) prohibits use of some of those same methods without specifying what should be used in their place. That is, section 1902(a)(17)(D) of the Act prohibits the consideration of income and resources of family members as available to applicants and recipients (unless actually made available) except (1) an applicant or recipient for his or her respective spouse; and (2) parents for their children who are either under 21 or who are blind and disabled regardless of age. This requirement became a problem for AFDC-related non-cash assistance cases when an AFDC statutory change in 1984 mandated that all family members living together be considered one family unit for AFDC eligibility purposes and that the income and resources of all family members be pooled. As a result, AFDC sometimes requires attributing income and resources from persons other than spouses or parents (siblings, stepparents, grandparents, legal guardians, and alien sponsors) as available to the applicant or recipient. Use of the AFDC methods for cases involving income from persons other than spouses or parents, however, is contrary to section 1902(a)(17)(D) of the Act.

Since 1984, courts in a number of jurisdictions have ruled that section 1902(a)(17)(D) of the Act, which limits whose income and resources can be counted (unless actually made available), overrides section 1902(a)(10) of the Act, which requires that the AFDC methods be used to determine Medicaid eligibility for AFDC-related non-cash assistance cases. These rulings left open the issue of what method should be used uniformly among States. Currently, States are using a variety of methods for determining income for Medicaid eligibility purposes.

In response to our request for public comments on the January 1993 rule, we received many objections to the budgeting method set forth in the regulations. Specifically, we set forth in the January 1993 rule a prorating method of determining eligibility for AFDC-related non-cash assistance individuals. Under this method, individual members of the Medicaid budgetary unit would have their income and resource eligibility determined using separate standards that are calculated based on proration of existing standards. Parents' countable income and resources would be prorated equally among their dependents living in the home, including non-Supplemental Security Income dependents who may not be members of the budgetary unit. The proration would also take into account the needs of the parents. We also addressed how certain types of income would be counted and how certain types of disregards would be calculated.

We received comments from 13 States and 7 special interest groups. With one exception, all of the commenters objected to the budgeting method in these regulations. These commenters stated that the new procedure was error prone and unnecessarily complex. In addition, they believed that the required system and manual changes and personnel retraining would result in significant administrative costs.

We considered these comments, especially in the light of health care reform legislation. We also worked with the Medicaid Eligibility Technical Advisory Group (ETAG) to develop an acceptable policy. The ETAG prefers a policy that minimizes the disruption of current approaches. We also met with recipient advocates who endorse allowing States a choice of several options, but strongly oppose allowing the budgeting method in the referenced regulation to be one of these options.

Consequently, we are withdrawing the regulations containing the mandatory budgetary method for determining financial eligibility for AFDC-related non-cash assistance individuals. By doing this, we are allowing States flexibility, within any constraints imposed by court orders or agreements with recipient advocate groups, to interpret the current provisions in the law. That is, at this time, in the absence of specific regulatory guidance on the methodologies for establishing income and resource eligibility for AFDC-related non-cash assistance individuals, States will be required to use methodologies that comply with the statute and any applicable court orders.

**II. Provisions of the Final Regulation**

As a result of our decision to withdraw the regulations that require States to use a mandatory budgetary method for determining financial eligibility for AFDC-related non-cash assistance individuals, we are making the following changes to the January 1993 rule:

- We have withdrawn §§ 435.604, 435.606, 436.604, and 436.606. These sections contained the procedures for determining income and resource eligibility for AFDC-related non-cash assistance groups.
- We have removed and reserved § 435.113(b) and § 436.111(b)(2). These paragraphs required States to provide Medicaid to individuals denied AFDC because of the involuntary inclusion of all eligible siblings living in the home as members of AFDC filing units.
- We have removed and reserved § 435.600(b) and § 436.600(b). These sections referred respectively to § 435.604 and § 436.604, which have been removed.
- We have revised § 435.601 and § 436.601 by removing paragraph (e) in each section. These paragraphs contain criteria for exceptions to financial application eligibility methodologies and State plan requirements that are no longer applicable. We also have corrected related cross-references in paragraph (b) and (f)(1) of each section.
- We have revised § 435.602 by removing and reserving paragraph (d) and § 436.602 by removing and reserving paragraph (c). These paragraphs contain requirements for determining financial responsibility of relatives and other individuals for AFDC-related non-cash assistance groups. We also have corrected related cross-references in §§ 435.602(a), 436.602(a), and 436.602(a)(2).

The remainder of the January 1993 rule is unchanged and is effective on August 18, 1994.

**III. Regulatory Impact Statement**

We generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicaid providers as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds that is located outside a metropolitan statistical area.

This final rule revises the January 19, 1993, final rule with comment period. We have decided to withdraw the second part of that rule which basically codified a mandatory budgetary method for determining financial eligibility for AFDC-related non-cash assistance individuals. We concluded, along with a number of other entities, that this provision would result in significant administrative costs. The mandatory budget method has, therefore, been withdrawn.

This final rule will take effect on August 18, 1994. We believe that the withdrawal of the referenced regulations minimizes any unnecessary burden on the public, and that the best regulatory options have been selected. Further, we believe that these regulations will not lead to increased costs. Therefore, we have determined that these provisions will have a negligible cost effect and that a regulatory impact analysis is not required.

We have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. For these reasons, we are not preparing analyses for either RFA or section 1102(b) of the Act.

This final rule does not contain information collection requirements; therefore, it is not subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by OMB.

**Lists of Subjects**

*42 CFR Part 435*

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages

*42 CFR Part 436*

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands

42 CFR Chapter IV, Subchapter C is amended as follows:

## PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435, as published in the **Federal Register** on January 19, 1993 (58 FR 4931), and further amended to be effective on August 18, 1994 or October 18, 1994, is amended as follows:

1. The authority citation for part 435 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 435.113 [Amended]**

2. Section 435.113 is amended by removing and reserving paragraph (b).

**§ 435.600 [Amended]**

3. Section 435.600 is amended by removing and reserving paragraph (b).

**§ 435.601 [Amended]**

4. Section 435.601 is amended as follows:

a. In paragraph (b), the phrase "Except as specified in paragraphs (c), (d), and (e)," is revised to read "Except as specified in paragraphs (c) and (d),".

b. Paragraph (e) is removed and reserved.

c. In paragraph (f)(1), the phrase "except to the extent precluded by §§ 435.602, 435.604, and 435.606," is revised to read "except to the extent precluded in § 435.602,".

**§ 435.602 [Amended]**

5. Section 435.602 is amended as follows:

a. In paragraph (a), the phrase "Subject to the provisions of paragraphs (b), (c), and (d) of this section," is revised to read "Subject to the provisions of paragraphs (b) and (c) of this section,".

b. Paragraph (d) is removed and reserved.

**§ 435.604 [Withdrawn]**

6. Section 435.604 is withdrawn and the section number is reserved.

**§ 435.606 [Withdrawn]**

7. Section 435.606 is withdrawn and the section number is reserved.

## PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436, as published in the Federal Register on January 19, 1993 (58 FR 4931), and further amended to become effective on August 18, 1994 or October 18, 1994, is amended as follows:

1. The authority citation for part 436 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 436.111 [Amended]**

2. Section 436.111 is amended by removing and reserving paragraph (b)(2).

**§ 436.600 [Amended]**

3. Section 436.600 is amended by removing and reserving paragraph (b).

**§ 436.601 [Amended]**

4. Section 436.601 is amended as follows:

a. In paragraph (b), the phrase "Except as specified in paragraphs (c), (d) and (e) of this section," is revised to read "Except as specified in paragraphs (c) and (d) of this section,".

b. Paragraph (e) is removed and reserved.

c. In paragraph (f)(1), the phrase "except to the extent precluded by §§ 436.602, 436.604, and 436.606," is revised to read "except to the extent precluded by § 436.602,".

**§ 436.602 [Amended]**

5. Section 436.602 is amended as follows:

a. In the introductory text of paragraph (a), the phrase "Subject to the provisions of paragraphs (b), (c), and (d) of this section," is revised to read "Subject to the provisions of paragraphs (b) and (c) of this section,".

b. In paragraph (a)(2), the phrase ", except as specified in paragraphs (c) and (d) of this section" at the end of the first sentence is removed.

c. Paragraph (c) is removed and reserved.

**§ 436.604 [Withdrawn]**

6. Section 436.604 is withdrawn and the section number is reserved.

**§ 436.606 [Withdrawn]**

7. Section 436.606 is withdrawn and the section number is reserved.

(Catalog of Federal Domestic Assistance Program No. 93.778-Medical Assistance Program)

Dated: August 11, 1994.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Dated: August 12, 1994.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–20561 Filed 8–18–94; 8:45 am]

BILLING CODE: 4120–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

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

**EFFECTIVE DATES:** The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

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

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

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

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

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

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

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

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

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

**Executive Order 12778, Civil Justice Reform**

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

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

**PART 65—[AMENDED]**

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

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

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

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Texas: Denton (FEMA Docket No. 7089). | Town of Flower Mound | Feb. 18, 1994, Feb. 25, 1994, *Denton Record Chronicle.* | The Honorable Larry Lipscomb, Mayor, Town of Flower Mound, 2121 Timbers Road, Flower Mound, Texas 75028. | Jan. 4, 1994 | 480777 |
| Texas: Harris (FEMA Docket No. 7089). | City of Houston | Feb. 18, 1994, Feb. 25, 1994, *The Houston Post.* | The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251. | Jan. 24, 1994 | 480296 |
| Texas: Harris (FEMA Docket No. 7089). | City of Pasadena | Feb. 18, 1994, Feb. 25, 1994, *Pasadena Citizen.* | The Honorable Johnny Isabell, Mayor, City of Pasadena, P.O. Box 672, Pasadena, Texas 77501. | Jan. 24, 1994 | 480307 |
| Texas: Bexar (FEMA Docket No. 7089). | City of San Antonio | Feb. 17, 1994, Feb. 24, 1994, *San Antonio Express News.* | The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966. | Feb. 2, 1994 | 480045 |
| Texas: Denton (FEMA Docket No. 7089). | Town of Trophy Club | Feb. 8, 1994, Feb. 15, 1994, *The Keller Citizen.* | The Honorable Jim Carter, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, Texas 76262. | Jan. 25, 1994 | 481606 |

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

Dated: August 12, 1994.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 94–20526 Filed 8–19–94; 8:45 am]

BILLING CODE 6718–03–M

**44 CFR Part 67**

**Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

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

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

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

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

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

**National Environmental Policy Act.**

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

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

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

**Executive Order 12778, Civil Justice Reform**

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

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

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

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **COLORADO** | |
| **Frisco (town), Summit County (FEMA Docket No. 7088)** | |
| *No Name Creek:* | |
| Approximately 565 feet downstream of Seventh Avenue .. | *9,058 |
| Approximately 10 feet upstream of Seventh Avenue .. | *9,062 |
| Approximately 570 feet upstream of Seventh Avenue .. | *9,067 |
| Approximately 1,340 feet upstream Seventh Avenue ..... | *9,082 |
| *Jug Creek:* | |
| Approximately 1,000 feet downstream of Belford Street ..... | *9,039 |
| Approximately 200 feet downstream of Belford Street ..... | *9,053 |
| Approximately 300 feet downstream of Belford Street ..... | *9,057 |
| Approximately 1,100 feet upstream of Belford Street ..... | *9,071 |
| *Meadow Creek:* | |
| Approximately 360 feet downstream of Meadow Creek Drive ..... | *9,029 |
| Just upstream of Tenmile Drive ..... | *9,041 |
| Approximately 140 feet downstream of Meadow Drive ..... | *9,052 |
| Approximately 1,160 feet upstream of Meadow Drive ..... | *9,067 |
| *Tenmile Creek:* | |
| Approximately 170 feet downstream of Summit Boulevard | *9,109 |
| Approximately 390 feet upstream of Summit Boulevard | *9,026 |
| Approximately 1,210 feet upstream of Summit Boulevard | *9,040 |
| Approximately 2,050 feet upstream of Summit Boulevard | *9,051 |
| Approximately 360 feet downstream of the Main Street Bridge ..... | *9,099 |
| Approximately 400 feet upstream of the Main Street Bridge ..... | *9,109 |
| Approximately 1,440 feet upstream of the Main Street Bridge ..... | *9,122 |
| Approximately 1,565 feet upstream of the Main Street Bridge ..... | *9,124 |
| Approximately 700 feet north of the intersection of Main Street and Sixth Avenue ..... | #1 |
| *Miners Creek:* | |
| Approximately 1,130 feet downstream of Colorado State Highway 9 ..... | *9,019 |
| Approximately 270 feet downstream of Colorado State Highway 9 ..... | *9,027 |
| Approximately 290 feet upstream of Colorado State Highway 9 ..... | *9,039 |
| Approximately 1,390 feet upstream of Colorado State Highway 9 ..... | *9,059 |
| **Maps are available for inspection** at Town Hall, Town of Frisco, #1 Main Street, Frisco, Colorado. | |
| **Summit County (unincorporated areas) (FEMA Docket No. 7088)** | |
| *Blue River:* | |
| Approximately 880 feet downstream of Swan Mountain Road ..... | *9,020 |
| Approximately 2,090 feet upstream of Swan Mountain Road ..... | *9,058 |
| Approximately 5,080 feet upstream of Swan Mountain Road ..... | *9,093 |
| Approximately 6,920 feet upstream of Swan Mountain Road ..... | *9,115 |
| Approximately 8,740 feet upstream of Swan Mountain Road ..... | *9,136 |
| Approximately 7,200 feet downstream of Colorado State Highway 9 ..... | *9,633 |
| Approximately 5,080 feet downstream of Colorado State Highway 9 ..... | *9,677 |
| Approximately 2,860 feet downstream of Colorado State Highway 9 ..... | *9,720 |
| Approximately 340 feet downstream of Colorado State Highway 9 ..... | *9,780 |
| Approximately 1,940 feet upstream of Colorado State Highway 9 ..... | *9,813 |
| *Snake River:* | |
| Approximately 4,780 feet downstream of East Keystone Road ..... | *9,252 |
| Approximately 2,840 feet downstream of East Keystone Road ..... | *9,271 |
| Approximately 460 feet downstream of East Keystone Road ..... | *9,295 |
| Approximately 2,560 feet upstream of East Keystone Road ..... | *9,330 |
| Approximately 4,400 feet upstream of East Keystone Road ..... | *9,350 |
| *Meadow Creek:* | |
| Approximately 980 feet upstream of Dillon Reservoir ... | *9,020 |
| Approximately 1,600 feet upstream of Dillon Reservoir ... | *9,023 |
| Approximately 2,180 feet upstream of Dillon Reservoir ... | *2,025 |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 2,580 feet upstream of Colorado State Highway 9 | *9,069 |
| Approximately 3,420 feet upstream of Colorado State Highway 9 | *9,085 |
| *French Gulch:* | |
| Approximately 70 feet upstream of Colorado State Highway 9 | *9,490 |
| Approximately 710 feet upstream of Colorado State Highway 9 | *9,500 |
| Approximately 3,370 feet upstream of Colorado State Highway 9 | *9,606 |
| Approximately 4,750 feet upstream of Colorado State Highway 9 | *9,662 |
| *North Fork Snake River:* | |
| Approximately 990 feet downstream of Montezuma Road | *9,326 |
| Approximately 620 feet upstream of Montezuma Road | *9,384 |
| Approximately 1,660 feet upstream of Montezuma Road | *9,438 |
| *South Barton Gulch:* | |
| Approximately 2,780 feet downstream of American Road | *9,392 |
| Approximately 580 feet downstream of American Road | *9,460 |
| Approximately 220 feet upstream of American Road | *9,492 |
| Approximately 1,820 feet upstream of American Road | *9,590 |
| Approximately 3,240 feet upstream of American Road | *9,719 |
| *Swan River:* | |
| Approximately 40 feet upstream of the confluence with Blue River | *9,138 |
| Approximately 2,140 feet upstream of the confluence with Blue River | *9,169 |
| Approximately 3,600 feet upstream of the confluence with Blue River | *9,190 |
| Approximately 5,300 feet upstream of the confluence with Blue River | *9,215 |
| Approximately 6,280 feet upstream of the confluence with Blue River | *9,229 |
| *Tenmile Creek (Above 4th Avenue):* | |
| Approximately 560 feet upstream of U.S. Route 6 | *9,110 |
| Approximately 1,500 feet upstream of U.S. Route 6 | *9,123 |
| *Miners Creek:* | |
| Approximately 160 feet downstream of Pitkin Street | *9,040 |
| Approximately 1,300 feet upstream of Pitkin Street | *9,068 |
| Approximately 2,430 feet upstream of Pitkin Street | *9,111 |
| *Jug Creek:* | |
| Approximately 300 feet upstream of the confluence with Miners Creek | *9,046 |
| Approximately 1,810 feet upstream of the confluence with Miners Creek | *9,059 |
| Approximately 2,070 feet upstream of the confluence with Miners Creek | *9,068 |
| *No Name Creek:* | |
| Approximately 1,960 feet upstream of the confluence with Jug Creek | *9,080 |

**Maps are available for inspection** at the Community Development Division, Summit County, 120 Lincoln Street, Breckenridge, Colorado.

## MONTANA

**Powell County (unincorporated area) (FEMA Docket No. 7088)**

| | |
|---|---|
| *Little Blackfoot River—Garrison Reach:* | |
| At downstream Limit of Detailed Study at Northern Railroad | *4,345 |
| Just downstream of U.S. Highway 10 | *4,347 |
| Just upstream of U.S. Highway 10 | *4,353 |
| At upstream Limit of Detailed Study approximately 2,500 feet upstream of U.S. Highway 10 | *4,360 |
| *Little Blackfoot River—Avon Reach:* | |
| At downstream Limit of Detailed Study approximately 1,950 feet downstream of U.S. Highway 12 | *4,656 |
| Just upstream of downstream crossing of U.S. Highway 12 | *4,669 |
| Approximately 175 feet downstream of upstream crossing of U.S. Highway 12 | *4,710 |
| Just upstream of Burlington Northern Railroad | *4,716 |
| At upstream Limit of Detailed Study approximately 3,250 feet upstream of U.S. Highway 12 | *4,725 |
| *Little Blackfoot River—Elliston Reach:* | |
| At downstream Limit of Detailed Study approximately 6,150 feet below the confluence at Elliston Creek | *4,979 |
| Approximately 4,250 feet above downstream Limit of Detailed Study | *5,008 |
| Approximately 1,750 feet below the confluence of Elliston Creek | *5,009 |
| Approximately 2,500 feet upstream of the confluence of Elliston Creek | *5,040 |
| Approximately 4,800 feet downstream of Burlington Northern Railroad | *5,042 |
| Just upstream of U.S. Highway 12 | *5,081 |
| At the confluence of Telegraph Creek | *5,184 |
| At the upstream Limit of Detailed Study approximately 11,800 feet above the confluence of Telegraph Creek | *5,318 |
| *Telegraph Creek:* | |
| At the confluence with Little Blackfoot River—Elliston Reach | *5,184 |
| Approximately 10,600 feet upstream of the confluence with Little Blackfoot River—Elliston Reach | *5,342 |
| Approximately 12,650 feet upstream of the confluence with Little Blackfoot River—Elliston Reach | *5,390 |
| At Limit of Detailed Study approximately 16,640 feet above the confluence with Little Blackfoot River—Elliston Reach | *5,520 |
| *Elliston Creek:* | |
| At the confluence with Little Blackfoot River—Elliston Reach | *5,024 |
| Approximately 1,000 feet upstream of the confluence with Little Blackfoot River—Elliston Reach | *5,042 |
| Just downstream of the Burlington Northern Railroad | *5,044 |
| At Limit of Detailed Study approximately 2,825 feet upstream of U.S. Highway 12 | *5,134 |

**Maps are available for inspection** at the Department of Natural Resources and Conservation, Floodplain Management Section, 1520 East Sixth Avenue, Helena, Montana

## NEVADA

**Reno (city), Washoe County (FEMA Docket No. 7061)**

| | |
|---|---|
| *Dry Creek/Boynton Slough:* | |
| Just upstream of East McCarran Boulevard | *4,393 |
| Just downstream of Peckham Lane | *4,414 |
| Approximately 600 feet upstream of Huffacker Lane | *4,490 |
| At Panorama Drive | *4,513 |

**Maps are available for inspection** at the Community Development Engineering Department, 450 Sinclair Street, Third Floor, Reno, Nevada.

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Washoe County (unincorporated areas) (FEMA Docket No. 7061)** | |
| *Dry Creek/Boynton Slough:* | |
| Just upstream of East McCarran Boulevard | *4,393 |
| Approximately 100 feet upstream of Dieringer Drive | *4,536 |
| Approximately 1,400 feet upstream of Holcomb Lane | *4,649 |
| *Tuckee River:* | |
| Approximately 1,250 feet upstream of Mustang Ranch Road No. 2 | *4,326 |
| Approximately 4,500 feet upstream of Mustang Ranch Road No. 1 | *4,340 |
| Approximately 1,800 feet upstream of State Highway 45 | *4,361 |
| **Maps are available for inspection** at the Washoe County Department of Public Works, 1001 East Ninth Street, Reno, Nevada. | |
| **UTAH** | |
| **Bluffdale (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| Approximately 9,100 feet downstream of 14600 South Street | *4,355 |
| At 14600 South Street | *4,383 |
| At Denver and Rio Grande Western Railroad | *4,430 |
| At the Joint Diversion Structure | *4,435 |
| At the Turner Dam Diversion Structure | *4,484 |
| Approximately 900 feet upstream of the Turner Dam Diversion Structure | *4,488 |
| **Maps are available for inspection** at the City Clerk's Office, City of Bluffdale, 14175 South Redwood Road, Bluffdale, Utah. | |
| **Draper (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| Approximately 7,800 feet downstream of 12300 South Street | *4,321 |
| At 12300 South Street | *4,331 |
| At 12600 South Street | *4,335 |
| At the confluence of Corner Canyon Creek | *4,346 |
| Approximately 4,050 feet upstream of the confluence of Corner Canyon Creek | *4,355 |
| **Maps are available for inspection** at the City Engineer's Office, City of Draper, 12441 South, 900 East Street, Draper, Utah. | |
| **Midvale (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| Approximately 6,900 feet downstream of West Center Street | *4,276 |
| At West Center Street | *4,286 |
| Approximately 1,350 feet upstream of West Center Street | *4,288 |
| **Maps are available for inspection** at the City of Midvale, Engineering Department, 80 East Center Street, Midvale, Utah. | |
| **Murray (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| Approximately 3,600 feet downstream of 4500 South Street | *4,242 |
| At Brighton Canal Diversion | *4,246 |
| At Bullion Street | *4,262 |
| At 6400 South Street | *4,273 |
| Approximately 1,100 feet upstream of 6400 South Street | *4,276 |
| *Big Cottonwood Creek:* | |
| Approximately 80 feet upstream of the confluence with the Jordan River | *4,243 |
| Approximately 800 feet upstream of the confluence with the Jordan River | *4,243 |
| At 500 West Street | *4,245 |
| Approximately 130 feet upstream of 500 West Street | *4,246 |
| **Maps are available for inspection** at the City of Murray, Public Works Office, 5025 South State Street, Room 200, Murray, Utah. | |
| **Riverton (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| Approximately 4,650 feet downstream of 12400 South Street | *4,324 |
| At 12400 South Street | *4,331 |
| At 12600 South Street | *4,335 |
| At the confluence of Corner Canyon Creek | *4,346 |
| Approximately 4,100 feet upstream of the confluence of Corner Canyon Creek | *4,355 |
| **Maps are available for inspection** at the City Engineering Department, City of Riverton, 949 East, 12400 South Street, Riverton, Utah. | |
| **Salt Lake City (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| At Surplus Canal Diversion Structure | *4,232 |
| Approximately 25 feet upstream of 21st South Street | *4,232 |
| **Maps are available for inspection** at the Public Utilities Department, City of Salt Lake City, 1530 South, West Temple Street, Salt Lake City, Utah. | |
| **Salt Lake County (unincorporated areas) (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| At 2100 South Street | *4,232 |
| At 3300 South Street | *4,236 |
| At 3900 South Street | *4,239 |
| At Taylorsville Expressway | *4,245 |
| At the Brighton Canal Diversion Structure | *4,246 |
| At the confluence with Little Cottonwood Creek | *4,249 |
| At Salt Lake County—City of Murray boundary | *4,256 |
| Approximately 300 feet downstream of 7800 South Street | *4,285 |
| Approximately 1,300 feet upstream of 7800 South Street | *4,288 |
| At 9000 South Street | *4,297 |
| Approximately 2,700 feet upstream of 9000 South Street | *4,300 |
| Approximately 3,200 feet upstream of 900 South Street | *4,301 |
| **Maps are available for inspection** at the Development Services Division, Salt Lake County, 2001 South Street, No. N–3600, Salt Lake City, Utah. | |
| **Sandy City (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| At 9000 South Street | *4,297 |
| At the North Jordan Canal Diversion | *4,302 |
| Approximately 3,125 feet above the North Jordan Canal Diversion | *4,305 |
| **Maps are available for inspection** at the City Engineering Department, City of Sandy City, 10000 Centennial Parkway, Sandy City, Utah. | |
| **South Jordan (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 350 feet downstream of the North Jordan Canal Diversion | *4,301 |
| At 10600 South Street | *4,313 |
| Approximately 6,500 feet upstream of the confluence of Willow Creek | *4,324 |
| *Willow Creek:* | |
| At the confluence with the Jordan River | *4,317 |
| Approximately 400 feet upstream of the confluence with the Jordan River | *4,317 |
| Approximately 1,000 feet upstream of the confluence with the Jordan River | *4,318 |
| Approximately 2,560 feet upstream of the confluence with the Jordan River | *4,344 |
| **Maps are available for inspection** at the Planning Department, City of South Jordan, 111755 Redwood Road, South Jordan, Utah. | |
| **South Salt Lake (city), Salt Lake County (FEMA Docket No. 7088)** | |
| *Jordan River:* | |
| Approximately 100 feet downstream of 2100 South Street | *4,233 |
| At the confluence of Mill Creek | *4,234 |
| At 3300 South Street | *4,235 |
| **Maps are available for inspection** at the City Engineering Department, South Salt Lake City, 220 East Morris Avenue, South Salt Lake, Utah. | |
| **Utah County (unincorported areas) (FEMA Docket No. 7090)** | |
| *Spanish Fork River:* | |
| At the confluence with Thistle and Soldier Creeks | *5,055 |
| Approximately 1,100 feet downstream of the confluence with Thistle and Soldier Creeks | *5,055 |
| *Thistle Creek:* | |
| At the confluence with Spanish Fork River and Soldier Creek | *5,055 |
| Approximately 1,200 feet upstream of the confluence with Spanish Fork River and Soldier Creek | *5,060 |
| Approximately 2,400 feet upstream of the confluence with Spanish Fork River and Soldier Creek | *5,069 |
| *Soldier Creek:* | |
| At the confluence with Thistle Creek and Spanish Fork River | *5,055 |
| Approximately 1,000 feet upstream of U.S. Highway 89 | *5,069 |
| Approximately 4,400 feet upstream of the confluence with Thistle Creek and Spanish Fork River | *5,072 |
| **Maps are available for inspection** at the Utah County Engineering Department, 2855 South State Street, Provo, Utah. | |

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

Dated: August 12, 1994.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 94–20525 Filed 8–19–94; 8:45 am]

BILLING CODE 6718–03–M

## HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

### 45 CFR Part 1801

### Harry S. Truman Scholarship Regulations

**AGENCY:** Harry S. Truman Scholarship Foundation.

**ACTION:** Final rule.

**SUMMARY:** The regulations governing the annual scholarship competition reflect modifications in the program adopted by the Harry S. Truman Scholarship Foundation on August 16, 1994. Modifications were made to clarify and make explicit policies of the Foundation in administering the Truman Scholarship Program. Amendments provide for a unified competition in the junior year for students from four-year institutions and for transfer students from two-year institutions.

**EFFECTIVE DATE:** September 1, 1994.

**ADDRESSES:** Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Louis H. Blair, (202) 395–4831.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 45 CFR Part 1801**

Grant programs—education, scholarships and fellowships.

Title 45 of the Code of Federal Regulations is amended by revising part 1801 to read as follows:

## PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

**Subpart A—General**

Sec.
1801.1 Annual Truman Scholarship competition.
1801.2 Truman Scholars are selected from qualified applicants from each State.
1801.3 Students eligible for nomination.
1801.4 Definitions.

**Subpart B—Nominations**

1801.10 Nomination by institution of higher education.
1801.11 Annual nomination.
1801.12 Institutions with more than one campus.
1801.13 Two-year institutions.
1801.15 Faculty representative.
1801.16 Closing date for receipt of nominations.
1801.17 Contents of application.

**Subpart C—The Competition**

1801.20 Selection of finalists.
1801.21 Evaluation criteria.
1801.22 Interview of finalists with panel.
1801.23 Recommendation by panel.
1801.24 Nomination of seniors.
1801.25 Selection of Truman Scholars by the Foundation.

**Subpart D—Graduate Study and the Work Experience Program**

1801.30 Continuation into graduate study.
1801.31 Approval of graduate study programs by the Foundation.
1801.32 Eligible colleges and degree programs.
1801.33 Public service internships and employment prior to graduate study.

**Subpart E—Payments to Finalists and Scholars**

1801.40 Travel Expenses of finalists.
1801.41 Scholarship stipends.
1801.42 Definition of "fee".
1801.43 Allowance for books.
1801.44 Allowance for room and board.
1801.45 Deduction for benefits from other sources.

**Subpart F—Payment Conditions and Procedures**

1801.50 Acceptance of the scholarship.
1801.51 Report at the beginning of each term.
1801.52 Payment schedule.
1801.53 Postponement of payment.
1801.54 Annual Report.

**Subpart G—Duration of Scholarship**

1801.60 Renewal of scholarship.
1801.61 Termination of scholarship.
1801.62 Recovery of scholarship funds.

**Authority:** 20 U.S.C. 2001–2012.

### Subpart A—General

**§ 1801.1 Annual Truman Scholarship competition.**

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

**§ 1801.2 Truman Scholars are selected from qualified applicants from each State.**

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets eligibility criteria in §§ 1801.3 and 1801.21 and who is recommended for appointment as a Truman Scholar as provided in § 1801.23.

(b) As used in this part, "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§ 1801.3 Students eligible for nomination.**

A student is eligible to be nominated for a Truman Scholarship if he or she:

(a) Is a junior level student pursuing a bachelor's degree as a full-time student at an accredited institution of higher education and will receive a baccalaureate degree the following academic year; or, is a senior-level student and is a resident of a state which did not have a Truman Scholar the previous year (see § 1801.24);

(b) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(c) Ranks in the upper quarter of his or her class; and

(d) Is a U.S. citizen, a U.S. national, or a permanent resident of the Commonwealth of the Northern Mariana Islands.

**§ 1801.4 Definitions**

As used in this part:

*Academic year* means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, three quarters, or the equivalent.

*Foundation* means the Harry S. Truman Scholarship Foundation.

*Full-time student* means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more time than the length of time normally taken at the institution of higher education.

*Graduate study* means the courses of study beyond the baccalaureate level which lead to an advanced degree.

*Institution of higher education* has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

*Junior* means a student who following completion of the current academic year has one more year of full-time course work to receive a baccalaureate degree.

*President* means the principal official responsible for the overall direction of the operations of an institution of higher education.

*Public service* means employment in: governments at any level, the uniformed services, public interest organizations, non-governmental research and/or educational organizations, and non-profit organizations such as those whose primary purposes are to help needy or disadvantaged persons or to protect the environment.

*Resident* means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account place of registration to vote, parent's placer of residence, and eligibility for "in-State" tuition rates at public institutions of higher education.

*Scholar* means a person who has been selected by the Foundation as a Truman Scholar, has accepted the Scholarship and agreed to the conditions of the award, and is eligible for Scholarship stipend(s).

*Senior* means the academic level recognized by the institution of higher education as being in the last year of study before receiving a baccalaureate degree.

*Sophomore* means the academic level recognized by the institution of higher education has having second year standing.

*Term* means the period which the institution of higher education uses to divide its academic year; Semester, trimester, or quarter.

## Subpart B—Nominations

**§ 1801.10 Nomination by institution of higher education.**

To be considered in the competition a student must be nominated by the institution of higher education that he or she attends.

**§ 1801.11 Annual nomination.**

(a) Except as provided in §§ 1801.11(b), 1801.12, and 1801.24, each institution of higher education may nominate up to three students annually. Each nominee may have legal residence in the same State as the institution or in a different State.

(b) The Foundation may announce each year in its Bulletin of Information special circumstances under which each institution may nominate one or more additional candidates.

(c) To nominate a student for the competition, the President of the institution or the designated Faculty Representative must send the student's application to the Foundation in accordance with §§ 1801.16 and 1801.17.

**1801.12 Institutions with more than one campus.**

If an institution of higher education has more than one component separately listed in the current edition of the Directory of Postsecondary Institutions published by the U.S. Department of Education, each may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

**§ 1801.13 Two-year institutions.**

If an institution of higher education does not offer education beyond the sophomore level, the institution may nominate only students who have completed their sophomore year and have become full-time juniors at other accredited institutions of higher education. The Faculty Representatives at the two-year institutions must forward the nomination materials to the President or the Faculty Representative of the four-year institution attended by the nominee in sufficient time for certification that the nominee is a full-time student with junior-level academic standing and for transmission of the nominations materials of transfer students to the Foundation by the closing date for receipt of nominations.

**§ 1801.15 Faculty representative.**

(a) Each institution which nominates a student must give the Foundation the name, business address, and business telephone number of a member of the faculty who will serve as liaison between the institution and the Foundation.

(b) It is the role of this Faculty Representative to publicize the Truman Scholarship on campus, solicit recommendations of potential nominees from members of the faculty, and insure that the institution's nominations, with all required supporting documents, are forwarded to the Foundation as required by § 1801.16 and the current Bulletin of Information.

(c) It is the role of the Faculty Representative or the President at a four-year institution to transmit to the Foundation the nomination materials of transfer students for receipt by the stated deadline. The institution may attach letters of endorsement for up to three transfer students.

**§ 1801.16 Closing date for receipt of nominations.**

The Foundation publishes an annual notice in the **Federal Register** of the date, usually December 2, by which

time the Foundation must receive nominations at the address specified in the nominations materials in order to be considered by the Foundation.

**§ 1801.17 Contents of application.**

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following:

(1) A certification of nomination and eligibility signed by the Faculty Representative or the President;

(2) A completed Nomination and Supporting Information Form signed by the nominee;

(3) An analysis of a public policy issue written by the nominee;

(4) A current official college transcript;

(5) Four letters of recommendation including one from the Faculty Representative or President; and a

(6) Statement that the student is willing to participate in a Truman Scholars Leadership program sponsored by the Foundation and to attend the awards ceremony.

## Subpart C—The Competition

**§ 1801.20 Selection of finalists.**

(a) The Foundation selects finalists from the students who are nominated.

**§ 1801.21 Evaluation criteria.**

(a) The Foundation selects finalists from the students nominated primarily on the basis of the following criteria:

(1) Leadership abilities and potential;

(2) Suitability of the nominee's proposed program of study and its appropriateness for a leadership career in public service with substantial impact on public policies;

(3) Writing and analytic skills;

(4) Academic performance and potential to perform well in graduate school; and

(5) Quality and extent of public and community service and government involvement.

(b) The Foundation selects finalists solely on the basis of the information required under § 1801.17.

(c) In the event that the Foundation determines that there are less than two well-qualified candidates from a state, the Foundation may invite all four-year institutions that nominated candidates for this competition to submit additional nominations of candidates from this state or to revise and re-submit nominations of unsuccessful candidates from this state.

**§ 1801.22 Interview of finalists with panel.**

The Foundation invites each finalist to an interview with a regional review panel. Panels evaluate Truman Finalists primarily on:

(a) Leadership potential including vision, sensitivity, and communications skills;

(b) Commitment to a career in government or elsewhere in public service; and

(c) Intellectual strength, analytical abilities, and prospects of performing well in graduate school.

**§ 1801.23 Recommendation by panel.**

(a) Each Panel is asked to recommend to the Board of Trustees the name of one candidate from each state in the region to be appointed as a Truman Scholar. The Foundation may authorize each region review panel to recommend additional Scholars from the States in its region.

(b) The recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each finalist in terms of criteria presented in § 1801.22.

**§ 1801.24 Nomination of seniors.**

(a) In the event that a regional review panel determines that none of the finalists from a state meet all the requirements expected of a Truman Scholar, it does not have to provide a recommendation. The Foundation will carry over the Scholarship for that state making two Scholarships available the succeeding year. Seniors will be eligible to participate the succeeding year as well as juniors. Institutions may nominate up to three seniors for this extra Scholarship in addition to three juniors.

(b) If additional nominations are made under paragraph (a) of this section, the applications must meet the requirements of Subpart B of this part, and are considered under the procedures of this subpart.

**§ 1801.25 Selection of Truman Scholars by the Foundation.**

The Foundation names Truman Scholars after receiving recommendations from the regional review panels.

## Subpart D—Graduate Study and the Work Experience Program

**§ 1801.30 Continuation into graduate study.**

(a) The Foundation will not conduct a new and separate competition for graduate scholarships, nor will it add new Truman Scholars at the graduate level.

(b) Only Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

**§ 1801.31 Approval of graduate study programs by the Foundation.**

(a) By December 1, Scholars desiring Foundation support for graduate study the following academic year must submit a proposed program of graduate study to the Foundation for approval. The graduate study program proposed for approval may differ from that proposed by the Scholar when nominated for a Truman Scholarship. Factors to be used by the Foundation in considering approval include being consistent with:

(1) Field of study initially proposed in the Scholar's Nomination and Supporting Information Form;

(2) Graduate school programs given priority in the current Bulletin of Information;

(3) Undergraduate educational program and work experience of the Scholar; and

(4) Preparation specifically for a career in public service.

(b) Foundation approval in writing of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in public service that specifies in detail how their graduate program and their overall educational and work experience plans will realistically prepare them for their chosen career goal in government or elsewhere in the public service. The Foundation issues guidelines to help Scholars prepare their proposals.

(d) After completing his or her undergraduate studies, a Scholar may request in writing each year a deferral of support for graduate studies. Deferrals must be requested no later than June 15 for the succeeding academic year. Scholars failing to request a year's deferral and to receive written approval from the Foundation will lose one year of funding support for each year for which they fail to request and receive deferrals. Total deferrals may not exceed four years unless an extension is approved by the Foundation. Extensions are generally granted only for Scholars attending graduate or professional school and supported by other scholarships or private resources or for Scholars with commitments to the uniformed services.

**§ 1801.32 Eligible colleges and degree programs.**

(a) Truman Scholars at the graduate level may use Foundation support to

study at any accredited institution that offers graduate study appropriate and relevant to their public service career goals.

(b) They may enroll in any relevant graduate program for a career in public service. A wide variety of fields of study can lead to careers in public service including—but not limited to—agriculture, biology and environmental sciences, engineering, mathematics, physical and social sciences as well as traditional fields such as economics, education, government, history, international relations, law, medicine and public health, political science, and public administration and public policy.

(c) Foundation support for graduate study is restricted to three years of full-time study for Scholars selected in 1991 and subsequent years from four year institutions and to two years for all other Scholars.

**§ 1801.33 Public service internships and employment prior to graduate study.**

The Foundation encourages all Scholars to consider participating in paid internships, regular employment, or in voluntary programs of work experience in the government or in other public service organizations before attending graduate school. The Foundation may give preference in its selection process to nominees planning such internships and employment.

## Subpart E—Payments to Finalists and Scholars

**§ 1801.40 Travel expenses of finalists.**

The Foundation will provide support for intercity round trip transportation from the finalist's place of study to the interview site. The Foundation does not reimburse finalists for lodging, meals, local transportation, or other expenses. The Foundation announces the terms and conditions of support in the annual Bulletin of Information.

**§ 1801.41 Scholarship stipends.**

The award covers eligible expenses in the following categories: tuition, fees, books, and room and board. Payments from the Foundation may be received to supplement, but not to duplicate, benefits received by the Scholar from the educational institution or from other foundations or organizations.

The benefits received from all sources combined may not exceed the costs of tuition, fees, books, and room and board as determined by the Foundation.

(a) Scholars selected in 1990 and prior years are eligible to receive annually up to $7,000.

(b) Scholars selected in 1991 and in subsequent years are eligible to receive a total of no more than $30,000. Each Scholar is eligible to receive up to $3000 for the senior year of undergraduate education. Scholars in graduate programs planning to receive degrees in one to two years are eligible to receive up to $13,500 per year or $10,000 (adjusted annually from January 1985 to reflect increases, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics), whichever is less. Scholars in graduate programs requiring three or more years of academic study are eligible to receive up to $9000 per year for a maximum of three years.

**§ 1801.42 Definition of "fee".**

*Fee*, in this part, means a typical and usual non-refundable charge by the institution of higher education for a service, a privilege, or the use of property which is required for a Scholars' enrollment and registration.

**§ 1801.43 Allowance of books.**

The cost allowance for a Scholar's books is $1000 per year. This figure may be increased by the Foundation with the new figure published in the Bulletin of Information.

**§ 1801.44 Allowance for room and board.**

The cost allowed for a Scholar's room and board is the amount the institution of higher education reports to the Foundation as the average cost of room and board for the Scholar's institution, given the type of housing the Scholar occupies.

**§ 1801.45 Deduction for benefits from other sources.**

The cost allowed for a Scholar's tuition, fees, books, room and board must be reduced to the extent that the cost is paid by another organization or provided for or waived by the Scholar's institution.

## Subpart F—Payment Conditions and Procedures

**§ 1801.50 Acceptance of the scholarship.**

To receive any payment, a Scholar must sign an acceptance of the scholarship and acknowledgment of the conditions of the award and submit it to the Foundation.

**§ 1801.51 Report at the beginning of each term.**

(a) To receive a Scholarship stipend, a Scholar must submit a current Payment Request Form containing the following:

(1) A statement of the Scholar's costs for tuition, fees, books, room and board;

(2) A certification by an authorized official of the institution that the statement of those costs is accurate;

(3) A certification of the amounts of those costs that are paid or waived by the institution or paid by another organization.

(4) A certification by an authorized official of the institution that the Scholar is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and is not engaged in gainful employment that interferes with the Scholar's studies.

(5) A certification by an authorized official of the institution that the Scholar is in academic good standing.

(b) At the beginning of the academic year, the Scholar must have his or her institution submit a certified Educational Expense Form showing the charges for tuition, fees, books, room and board and other expenses required for the academic year in which the Scholar will request Foundation support.

**§ 1801.52 Payment schedule.**

The Foundation will pay the Scholar a portion of the award after each report submitted under § 1801.51.

**§ 1801.53 Postponement of payment.**

(a) A Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose such conditions as necessary.

**§ 1801.54 Annual report.**

(a) Scholars with remaining eligibility for scholarship stipends must submit no later than July 15 an annual report to the Foundation.

(b) The annual report should be in narrative form and cover: courses taken and grades earned; courses planned for the coming year if Foundation support will be requested; public service and school activities; part-time or full-time employment and summer employment or internships; public service career goals and ambitions; and achievements, awards and recognition, publications or significant developments.

(c) Newly selected Scholars are required to submit an annual report updating the Foundation on their activities and accomplishments since the time they submitted their applications for the Truman Award.

## Subpart G—Duration of Scholarship

**§ 1801.60 Renewal of scholarship.**

It is the intent of the Foundation to provide scholarship awards for a period not to exceed a total of four academic years, only in accordance with the regulations established by its Board of

Trustees, and subject to an annual review for compliance with the requirements of this part.

**§ 1801.61 Termination of scholarship.**

(a) The Foundation may suspend or terminate a scholarship under the following specific conditions.

(1) Unsatisfactory academic performance for two terms, failure to pursue preparation for a career in public service, or loss of interest in a career in public service. Failure as an undergraduate to maintain a B or better term average for two terms is considered unsatisfactory academic performance.

(2) Failure to meet the criteria in § 1801.3(d), 1801.31(b), or 1801.51.

(3) Providing false, misleading, or materially incomplete information on any report, payment request or other submission to the Foundation.

(b) Before it terminates a scholarship, the Foundation will notify the Scholar of the proposed action and will provide an opportunity to be heard with respect to the grounds for termination.

**§ 1801.62 Recovery of scholarship funds.**

(a) When a Truman Scholarship is terminated for any reason, the Scholar must return to the Foundation any stipend funds which have not yet been spent or which the Scholar may recover.

(b) A Scholar who fails for any reason to complete as a full-time student a school term for which he or she has received a Foundation stipend, must return the amount of that stipend to the Foundation. The Foundation may waive this requirement upon application by the Scholar showing goods cause for doing so.

Dated: August 16, 1994.

**Louis H. Blair,**

*Executive Secretary.*

Dated: August 16, 1994.

**Elmer B. Staats,**

*Chairman.*

[FR Doc. 94–20503 Filed 8–19–94; 8:45 am]

BILLING CODE 6820–AB–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 24

**[PP Docket No. 93–253; FCC 94–217]**

## Implementation of Section 309(j) of the Communications Act—Competitive Bidding

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, reconsiders several aspects of the competitive bidding rules adopted for personal communications services in the 2 GHz band ("broadband PCS"). The amendments adopted: exempt entities owned and controlled by Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act from the affiliation rules for purposes of eligibility to apply for licenses in frequency blocks C and F ("entrepreneurs' blocks"); and modify the rules governing the attribution of gross revenues, total assets and personal net worth of investors in corporate applicants in the entrepreneurs' blocks to permit non-attributable investors to own up to 15 percent of a corporate applicant's voting stock. The Commission's action furthers the congressional policies of ensuring that all classes of designated entities are provided opportunities for meaningful participation in broadband PCS spectrum auctions. It also introduces additional flexibility into the attribution rules to attract investment to all types of corporations controlled by entrepreneurs' block eligibles and to increase the level of participation by smaller corporate applicants which have not made a public offering of their stock.

**EFFECTIVE DATE:** September 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** Peter A. Tenhula, Attorney, Office of General Counsel, (202) 418–1720.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration in PP Docket No. 93–253, adopted August 15, 1994 and released August 15, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, D.C. 20037.

### Summary of Order on Reconsideration

1. On June 29, 1994, the Commission adopted its Fifth Report and Order in the Implementation of Section 309(j) of the Communications Act—Competitive Bidding (*"Fifth Report and Order"*), 59 FR 37566 (July 22, 1994), where we established competitive bidding rules for broadband PCS. By this Order, we reconsider two aspects of our rules.

2. In the *Fifth Report and Order*, the Commission adopted rules providing that gross revenues, assets and personal net worth of affiliates of a broadband PCS applicant are attributed to the applicant and counted toward certain eligibility criteria. These affiliation requirements are intended to prevent entities that, for all practical purposes, do not meet the Commission's size standards from receiving benefits targeted to smaller entities. These safeguards ensure, pursuant to Section 309(j)(3) of the Communications Act, that *bona fide* designated entities are provided with meaningful economic opportunities to participate in the provision of spectrum-based services. Generally, affiliation arises when the applicant (or an attributable investor in the applicant) controls or has power to control another entity or if the applicant (or an attributable investor in the applicant) is under the control of the other entity. In developing its affiliation rules, the Commission borrowed from rules that are used by SBA to make size determinations, including guidelines used to establish when a firm should be deemed an affiliate of an applicant and other safeguards designed to ensure that only qualified entities are eligible for special benefits under the SBA's "section 8(a)" program. The Commission failed, however, to adopt an exemption in the SBA's rules that excluded from affiliation coverage entities owned and controlled by Indian tribes or Alaska Regional or Village Corporations. See 13 CFR 121.401(b), 121.1102(a), 124.112(c). SBA is required by statute generally to determine the size of a small business concern owned by an Indian tribe (or a wholly owned business entity of such tribe) "without regard to its affiliation with the tribe, any entity of tribal government, or any other business enterprise owned by the tribe." [1] The SBA has incorporated these and other statutory provisions into its regulations.[2]

3. We have reexamined our eligibility and affiliation rules and will make an amendment to these rules that is more consistent with the other Federal laws, policies and regulations so as not to

[1] 15 U.S.C. 636(j)(10)(J)(ii). The term "Indian tribe" defined in 25 U.S.C. 450b(e) includes "any Indian tribe, band nation, or other organized groups or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See also 15 U.S.C. 632(d) (defining "Qualified Indian tribe" for purposes of the Small Business Act; 25 CFR Part 83 (Department of the Interior procedures for establishing that an American Indian group exists as an Indian tribe).

[2] See Small Business Size Standards, 54 FR 52634, 52635 (Dec. 21, 1989) (amending 13 CFR 121.401(b)); Small Business Size Regulations; Minority Small Business and Capital Ownership Development, 59 FR 12811 (March 18, 1994) (amending 13 CFR 121.1102(a), 124.112(c)).

preclude the eligibility of entities owned and controlled by Indian tribes and Alaska Native Corporations for entrepreneurs' block licenses and for the benefits accorded businesses owned by members of minority groups. We believe that adoption of an affiliation exemption for Indian tribes and Alaska Native Corporations for purposes of eligibility in the entrepreneurs' blocks is consistent with these other Federal policies [3] and complies with the congressional mandate in the auction law.[4] Specifically, this exemption will ensure that the congressional policies of ensuring that minority-owned businesses have the opportunity to participate in spectrum-based services will apply to a class of designated entities, Indian tribes and Alaska Native Corporations, that Congress has determined to be economically disadvantaged. Without the exemption we adopt herein, the Commission would not be able to ensure that all classes of designated entities are provided meaningful opportunities to participate in broadband PCS spectrum auctions.

4. We note that Section 7(j)(10)(J) of the Small Business Act gives the SBA the discretion to consider tribal and other affiliations if it determines that one or more such tribally owned businesses have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.[5] We do not believe it is necessary to make such a determination for broadband PCS auctions.[6] The limited potential number of broadband PCS applicants that may benefit from this affiliation exemption will not present any unfair advantage to other eligible applicants that have had gross revenues up to $125 million and assets of up to $500 million. In addition, this exemption from the affiliation rules applies only to applicants for entrepreneurs' block licenses owned and controlled by Indian tribes and Alaska Native Corporations, not independent entities composed of individual Native Americans or other entities composed of individual Native Americans or other entities owned by members of this minority group. Thus, such entities will not have any unfair advantage over other minorities in the entrepreneurs' blocks.

[3] *C.f. LaRose* versus *FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974).

[4] See 47 U.S.C. 309(j)(4)(D), (3)(B).

[5] 15 U.S.C. 636(j)(10)(J)(ii)(II).

[6] We will retain the discretion, on a service-specific basis, to determine whether providing this exemption from similar affiliation rules applicable to other auctionable services would give these entities a substantial unfair competitive advantage.

5. For purposes of determining eligibility to bid in the entrepreneurs' blocks, we also attribute to the applicant (in addition to "affiliates" as discussed above) the gross revenues, assets and net worth of non-passive investors in the applicant. The attribution and affiliation rules are designed to prevent ineligible parties from exerting control or undue influence over firms eligible to apply for entrepreneurs' block licenses and to ensure that only *bona fide* applicants receive broadband PCS licenses. At the same time, we recognized that passive investment in entrepreneurs' block applicants would be critical to the successful development of these smaller companies. To balance these competing considerations, we decided not to attribute investors in corporate applicants that own a 25 percent or less passive equity interest. Passive equity in a corporate applicant was defined to include non-voting stock and no more than 5 percent of the voting stock. An exception was created, however for evaluating a publicly-traded corporation's financial eligibility in the entrepreneurs' blocks: an investor's ownership of no more than 15 percent of the voting stock in a publicly-traded corporate applicant would be considered passive equity.

6. We now believe that investors in all corporate applicants, including those that are not publicly traded, should be able to include in their 25 percent passive equity investment up to 15 percent of the applicant's voting stock. Both publicly traded and non-publicly traded applicants would have difficulty attracting substantial investment if each individual investor could own no more than 5 percent of the voting stock. Investors that are prepared to devote considerable funds to an entrepreneurs' block applicant should reasonably expect to exercise some ability to protect their investment through a modest level of voting stock ownership. The 15 percent voting stock limit would, in this respect, not rise to the level of a controlling interest, but, from the investor's perspective, could diminish the substantial risks associated with committing funds to a PCS applicant and enhance the potential rewards for providing start-up capital to these new ventures.

## Final Regulatory Flexibility Analysis

The Commission prepared a Final Regulatory Flexibility Analysis for the *Fifth Report and Order*. None of the rules adopted in this Order on Reconsideration modify that analysis.

## List of Subjects in 47 CFR Part 24

Radio.

## Amendatory Text

47 CFR part 24 is amended as follows:

## PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

**Authority:** Secs. 4, 301, 302, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.709 is amended by removing paragraph (b)(4)(iii) and revising paragraph (e) to read as follows:

**§ 24.709 Eligibility for licenses for frequency Blocks C and F.**

* * * * *

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth,* and *total assets* used in this section are defined in § 24.720.

3. Section 24.711 is amended by revising paragraph (a)(4) to read as follows:

**§ 24.711 Installment payments for licenses for frequency Blocks C and F.**

(a) * * *

(4) For purposes of determining whether an applicants has $75 million or less in gross revenues, gross revenues shall be attributed to the applicant and aggregated as provided in § 24.709(b).

* * * * *

4. Section 24.720 is amended by revising paragraphs (b)(2) and (j), by adding a new paragraph (l) (11) and by removing paragraph (m) to read as follows:

**§ 24.720 Definitions.**

* * * * *

(b) * * *

(2) For purposes of determining whether an entity meets the $40 million gross revenues and $40 million personal net worth standards in paragraph (b)(1) of this section, gross revenues and personal net worth shall be attributed to the entity and aggregated as provided in § 24.709(b).

* * * * *

(j) *Passive Equity. Passive equity* shall mean:

(1) For corporations, non-voting stock or stock that includes not more than fifteen percent of the voting equity;

(2) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

* * * * *

(l) * * *

(11) Exclusion from affiliation coverage. For purposes of § 24.709, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant owned and controlled by such tribes or corporations.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–20559 Filed 8–19–94; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–136; RM–8161, RM–8309, RM–8310]**

## Radio Broadcasting Services; Clewiston, Fort Myers Villas, Indiantown, Jupiter, Key Colony Beach, Key Largo, Marathon and Naples, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 280C2 for Channel 288C2 at Key Colony Beach, Florida, and modifies the construction permit for Station WKKB(FM) to specify operation on Channel 280C2, substitutes Channel 292C2 for Channel 280C2 at Key Largo, Florida, and modifies the license for Station WZMQ(FM) to specify operation on Channel 292C2, and substitutes Channel 288C2 for Channel 292A at Marathon, Florida, and modifies the license for Station WAVK(FM) to specify operation on Channel 288C2, at the request of Spanish Broadcasting System of Florida, Inc. See 58 FR 32338, June 9, 1993. Channel 280C2 can be allotted to Key Colony Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the construction permit site for Station WKKB(FM), at coordinates 24–42–25 and 81–06–17. Channel 292C2 can be allotted to Key Largo in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 20.3 kilometers (12.6 miles) southwest of the community, at coordinates 24–57–20 and 80–34–50. Channel 288C2 can be allotted to Marathon in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed site of Station WAVK(FM), at coordinates 24–43–44 and 81–02–05. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–136, adopted August 9, 1994, and released August 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288C2 and adding Channel 280C2 at Key Colony Beach, by removing Channel 280C2 and adding 292C2 at Key Largo, and by removing Channel 292A and adding Channel 288C2 at Marathon.

Federal Communications Commission.

**John A. Karousos,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94–20350 Filed 8–19–94; 8:45 am]

BILLING CODE 6712–01–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Parts 217 and 220**

**[FRA Docket No. RSOR–12, Notice No. 3]**

## Railroad Operating Rules and Radio Standards and Procedures

**RIN 2130-AA76**

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FRA is amending its Railroad Operating Rules and its Radio Standards and Procedures by removing requirements that railroads file their operational testing programs, operating rules instruction programs, annual summaries on operational tests and inspections, and their radio rules with the Federal Railroad Administrator and by substituting requirements that railroads retain such records and make them available to FRA representatives during normal business hours. FRA is also amending the Railroad Operating Rules by eliminating the requirement that Class III railroads file their operating rules, timetables, and timetable special instructions with the Federal Railroad Administrator. In addition, FRA is making technical changes to require railroads to record specific information when conducting operational tests and inspections of their employees. Finally, FRA is changing the Railroad Operating Rules and the Radio Standards and Procedures so as to allow retention of certain records by "electronic recordkeeping" (*i.e.*, retention of a computer record in lieu of a paper record). These amendments are intended to eliminate nonessential reporting requirements while enabling FRA to review meaningful data to determine the safety of a railroad's operations.

**EFFECTIVE DATE:** The rule becomes effective on November 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–0635) or Dennis R. Yachechak, Railroad Safety Specialist, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–504).

**SUPPLEMENTARY INFORMATION:** On October 19, 1992, FRA published a Notice of Proposed Rulemaking ("NPRM") on amendments to its Railroad Operating Rules (49 CFR Part 217) and Radio Standards and Procedures (49 CFR Part 220). 57 FR 47603 (1992). FRA proposed to remove requirements that railroads file their respective operating rules, radio rules, operational testing programs, operating rules instruction programs, and annual summaries on operational tests and inspections with FRA in Washington, D.C. and to substitute requirements that railroads retain these records and make them available upon request for inspection by FRA personnel during regular business hours. FRA believed that these proposed amendments, if adopted, would remove nonessential filing and reporting requirements while

concurrently reducing the burden borne by the railroads in paperwork and mailing expenses.

FRA received written comments on the proposal from seven entities and conducted a public hearing at the request of one. The public hearing was held in Washington, DC, on December 14, 1992, at which four organizations were represented. As a result of these comments and further analysis of the amendments proposed, FRA now publishes its final rule. FRA recognizes the importance of a railroad's operating rules and its radio rules for moving trains and other pieces of rolling equipment safely. The requirements promulgated in the final rule take this factor into account by balancing FRA's interest in reviewing pertinent documents against the railroads' interest in reducing their paperwork burden.

The final rule reflects reconsideration of the proposals announced in the NPRM. In the interest of reducing certain paperwork requirements, FRA has adopted certain proposed revisions to the regulations. FRA has also authorized railroads to retain information electronically so long as the railroads satisfy the stated conditions. Nevertheless, FRA has retained the filing requirements prescribed in existing § 217.7 for Class I railroads and Class II railroads. *See* Interstate Commerce Commission ("ICC") regulations at 49 CFR Part 1201 and ICC General Instructions 1–1. FRA has determined that its headquarters office, located in Washington, DC, needs to continue receiving copies of the operating rules of national and regional railroads to remain apprised of such rules. Finally, FRA believes that operational test and inspection records require more specific data elements. FRA has concluded that the newly identified data points serve to clarify the existing information requirements by defining the individual sources comprising each operational test and inspection. *See* Section-by-Section Analysis for details.

**Discussion of Comments and Conclusions**

FRA received written comments from the American Public Transit Association, Association of American Railroads ("AAR"), The American Short Line Railroad Association ("ASLRA"), Consolidated Rail Corporation ("Conrail"), New Jersey Transit Rail Operations, Union Pacific Railroad Company, and United Transportation Union ("UTU"). At the public hearing held December 14, 1992, four organizations participated: the Railway Labor Executives' Association ("RLEA"), the Brotherhood of Locomotive Engineers ("BLE"), AAR, and Conrail. The discussions that follow examine the issues raised by the commenters and analyze the reasons behind the adoption of the final rule.

1. *Whether FRA should abolish requirements that railroads file their operating rules, radio rules, and certain other documents with FRA.*

Two unions representing railroad employees objected to the proposal that railroads merely retain their operating rules, programs of operational tests and inspections, programs of instruction on operating rules, and annual summaries. The UTU declared that FRA was abdicating its responsibility of reviewing the documents for regulatory compliance. The UTU alleged that requiring the relocation of records to the railroad's system headquarters and division headquarters would vest FRA's field inspectors with total enforcement responsibility and that, consequently, document inspection would be entirely discretionary and no longer an integral part of FRA's safety assessment of a railroad. In other words, the UTU claimed, FRA was sending a message that administering the operating rules regulations was no longer a priority.

The BLE echoed the UTU's concerns, stating that the removal of agency review at the headquarters level represented a priority shift by FRA to no longer monitor a railroad's compliance with its operating rules or operational testing and inspection program (*i.e.*, efficiency testing program). The purpose of these regulations was to afford FRA headquarters the opportunity to analyze the data from the submitted documents. FRA needed to review incidents where railroad employees violated their employers' operating rules to determine whether these violations compromised railroad safety.

The AAR, however, fully endorsed FRA's proposals to eliminate filing. The AAR saw the filing of operating rules and related documents as unnecessary, burdensome, and serving no safety objective. Furthermore, the AAR noted that the railroad divisions comprising each railroad's system already provide the regulatory documents that FRA field inspectors request for review. Requiring relocation of these records to offices that are visited by FRA field personnel would facilitate document accessibility and retrieval.

The ASLRA also supported an end to the filing requirements. The ASLRA commented that these amendments would improve efficiency and economy for the short line railroads and would promote review by inspectors familiar with a railroad's operations. Three Class I railroads agreed that these measures would relieve burdensome requirements of photocopying and mailing these documents.

Although FRA proposed redesignating the locations of these records, FRA has reconsidered the impact this measure would have on enforcement, accident investigation, and other functions. A railroad's operating rules and timetables are valuable resources that are used by personnel of all disciplines in FRA's headquarters Office of Safety. For example, at FRA headquarters, these documents are reviewed in conjunction with accident reports filed at headquarters under 49 CFR Part 225 by the railroad. The railroads' rules and timetables are also consulted during FRA headquarters' analysis of draft accident investigation reports submitted by FRA field personnel. By maintaining a copy of the operating rules and timetables of major railroads, FRA retains its ability to determine whether the operating rules themselves, or violations of them, contributed to an accident. Retaining immediate access to these documents in Washington, DC, provides FRA's headquarters office with an efficient means to identify unsafe or inadequate procedures and to recommend practices that will ensure protection of train movements.

FRA believes that ensuring safe train and other movements requires each Class I railroad, Class II railroad, the National Railroad Passenger Corporation (Amtrak), and each railroad providing commuter service in a metropolitan or suburban area to continue filing its operating rules, timetables, and timetable special instructions with FRA. These railroads conduct extensive operations, all of which are governed by their operating rules. FRA's interest in reviewing these documents outweighs the burdens imposed on the railroads to continue filing these records. Therefore, FRA retains the existing filing requirements for these railroads.

In order to ensure that the rules FRA is reviewing are current, each railroad subject to this requirement must submit its operating rules, timetables, and timetable special instructions to FRA by December 21, 1994, and must submit each subsequent amendment to these operating rules, timetables, and timetable special instructions issued after November 21, 1994, to FRA within 30 days after it is issued.

On the other hand, FRA believes that the regulations on the operational testing programs, operating rules instruction programs, operational test and inspection records (*i.e.*, efficiency tests), and radio rules can be effectively enforced from the field. These records

are better utilized by FRA's regional personnel to monitor a railroad's compliance with the regulatory requirements. The field staff are best situated to observe a railroad's operations and determine whether the operational testing programs, operating rules instruction programs, operational test and inspections records, and radio rules are accurate and current. Additionally, the field inspectors can examine the operational test and inspection results in evaluating an employee's performance of his or her duties in accordance with a railroad's rules and instructions. FRA therefore adopts the proposal requiring railroads to retain their programs of operational tests and inspections, programs of instruction on railroad operating rules, records of operational tests and inspections (including annual summaries on operational tests and inspections), and radio rules at the designated locations provided.

2. *Whether the three-year record retention requirements proposed in the NPRM for operational testing programs and annual summaries of operational tests and inspections will enhance railroad safety.*

The NPRM proposed requiring railroads to retain their operational testing programs under § 217.9 and annual summaries of operational tests and inspections under § 217.13(a)–(c) for three calendar years.

FRA received comments supporting and opposing this proposal. The California Legislative Board of the UTU advocated record retention, but argued that this information should be retained for a minimum of five years. The BLE recommended that operational tests and inspections be retained for only six months to one year. Both the UTU and BLE stated that record retention would enable FRA to accurately assess a railroad's history of safe operations by examining this collected data. The unions believed that FRA could gain a wider perspective on a railroad's results of its operational tests and inspections and thereby target potential hazards in operating rules application, understanding, and compliance.

The railroads generally disagreed with the unions. One railroad urged FRA to modify its proposed retention requirement from three years to one year. Likewise, the AAR and ASLRA concurred with this recommendation. Specifically, the ASLRA claimed that the proposed three-year record retention requirement was superfluous given the recordkeeping requirements already imposed on railroads under the Locomotive Engineer Qualification and Certification regulations (49 CFR Part 240).

FRA disputes the ASLRA's judgment that these proposed requirements are duplicative. Part 240 addresses only locomotive engineers (persons who operate locomotives), but to ensure the safe movement of railroad equipment, railroads also routinely test conductors, operators, dispatchers, and maintenance-of-way personnel. All of these employees are, at one time or another, placed in situations or conditions that require knowledge and execution of a railroad's operating rules. Therefore, FRA believes that maximizing safety requires each railroad to retain its program of operational tests and inspections for all employees covered by its operating rules.

FRA has concluded that a thorough analysis of a railroad's operating procedures requires adopting the proposal as stated. Accordingly, all railroads must retain their operational testing programs and annual summaries on operational tests and inspections for three calendar years. FRA believes that trend analysis of this data will serve as an effective tool to assess a railroad's regulatory compliance. Inspectors can better recognize patterns of rules noncompliance and efforts railroads have made to remedy safety problems uncovered by previous tests. The results of these tests may be used as a barometer to measure the safety of a railroad and determine whether its level of compliance is improving, deteriorating, or remaining steady.

3. *Whether FRA's proposal requiring railroads to retain their operating rules, radio rules, operational testing programs, operating rules instruction programs, and annual summaries on operational tests and inspections at the system headquarters and all division headquarters is overly burdensome.*

The proposed rule identified two locations where railroads were required to retain pertinent rules and programs: division headquarters and system headquarters. The NPRM proposed that railroads would retain their operating rules and Radio Standards and Procedures paperwork at all of their division headquarters and at the system headquarters. *See* proposed §§ 217.7–217.13 (introductory text). FRA believed that most railroads already maintained copies of these records at these locations and that, therefore, FRA's enforcement personnel would be able to effectively and efficiently enforce Parts 217 and 220 by visiting any one of these sites.

This proposal prompted a number of parties to comment on its usefulness. Four commenters argued that requiring the railroads to retain the pertinent documents at their system headquarters and at all of their division headquarters would impose additional administrative costs with no offsetting safety benefits. Two organizations suggested that the operational testing programs and annual summaries be retained only at the railroad's system headquarters. Another two parties recommended that each railroad's division headquarters retain only information that applies to operations within that geographical division.

FRA agrees with the commenters that the proposal was overbroad in scope. The final rule departs from the NPRM by requiring that each division headquarters retain only those documents that the division applies and enforces (*e.g.*, operational testing programs and operating rules instruction programs). Likewise, each division headquarters must retain the records of operational tests and inspections conducted by that division. The proposal that each railroad retain its operational testing program, operating rules instruction program, and annual summaries on operational tests and inspections (for railroads with 400,000 or more total manhours) at the system headquarters has been adopted unchanged.

FRA assumes that railroads with extensive operations conduct operational tests and inspections at all division headquarters. Railroad safety requires that all employees responsible for train operations comply with a railroad's operating rules governing train movements over a territory. Therefore, under final rule § 217.9(d), railroads with 400,000 or more total manhours will be required to retain their annual summaries on operational tests and inspections records at their system headquarters and at each of their division headquarters. Although two parties asked that the regulation be amended to require railroads to retain all of their annual summaries only at the system headquarters level, FRA believes that this data must also be available at all division headquarters in order for inspectors to determine the extent of rules compliance in other divisions and system-wide. This requirement will not impose any further burdens on the railroads because, as one commenter noted, the railroads already maintain copies of these documents at the division level and provide copies for FRA inspectors upon request. FRA believes that effective inspections of annual summaries are best served by examining these records at a railroad's division headquarters and system headquarters.

4. *Whether FRA should permit electronic retention of documents.*

The NPRM never addressed this issue specifically. However, the proposal's emphasis on deregulation encouraged several parties to recommend that FRA allow railroads to retain records and reports by electronic recordkeeping. Both the written and oral comments stressed the cost savings that computer filing would provide to railroads. Requiring railroads to retain the information in paper form would impose additional administrative and storage costs. Computer storage of these documents would also enable the railroads to immediately update any amendments to their operational testing programs and operating rules instruction programs. Moreover, one commenter argued that retaining "hard copies" that contained historical data could create confusion in the offices that utilize the information.

After reviewing the written comments and the transcript of the public hearing, FRA agrees with the commenters that electronic retention is a practical alternative for railroads to comply with the regulatory recordkeeping requirements. FRA thus authorizes railroads to retain their operational testing programs, operational test and inspection records (including annual summaries), and instruction programs on operating rules by electronic recordkeeping provided that certain conditions are met to safeguard the data entered and stored in a computer system. These stipulations are stated in § 217.9(e) and explained in the Section-by-Section Analysis. Railroads that elect to use electronic data processing systems to store their operating rules information must be certain that proper security measures are implemented to ensure the integrity of the documents retrieved for inspection. Moreover, the information produced by computer must be organized in a usable format to afford FRA inspectors complete access to the records. FRA believes that electronic record retention is a viable option for the railroads provided that FRA's monitoring activities to measure compliance remain unimpeded.

**Section-by-Section Analysis**

The final rule contains substantial revisions to the proposal to amend the Railroad Operating Rules and the Radio Standards and Procedures (49 CFR Parts 217 and 220) in response to the written comments received, the testimony at the public hearing, and further review and reflection within FRA. Where terms or paragraphs in the final rule differ from those in the NPRM, the final rule provides designations or citations to reflect these amendments.

1. *Definitions.* In new *§ 217.4,* definitions of "Class I," "Class II," and "Class III" railroads are included to explain the classifications by which regulatory requirements are assigned. The definitions of "division headquarters" and "system headquarters" have been discussed earlier in this preamble.

2. *Operating rules; filing and recordkeeping.*

*Section 217.7* contains the filing and recordkeeping requirements with regard to operating rules, timetables, and timetable special instructions.

Paragraph (a) provides that Class I railroads, Class II railroads, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in a metropolitan or suburban area must continue to file their operating rules, timetables, and timetable special instructions with the Federal Railroad Administrator. The deadline for filing these documents is November 21, 1994. Most railroads are in compliance with FRA's existing provisions concerning such filings. For such railroads, it is not FRA's intent that another copy of already filed material be given to the agency. If a railroad currently has its documents on file with the agency, FRA will deem that railroad to be in compliance with this section, if the documents are in effect on November 21, 1994. (In other words, if previously filed documents are still in effect on November 21, 1994, then a railroad has complied with the new provision, having filed before December 21, 1994.)

Paragraph (b) provides that railroads subject to the filing requirements must also submit to FRA a copy of any amendment to these documents issued after November 21, 1994, within 30 days after it is issued.

Under paragraph (c), Class III railroads and all other railroads subject to this part but not subject to paragraphs (a) and (b) of this section must retain one copy of their current operating rules, timetables, and timetable special instructions at their respective system headquarters. These documents must be made available to FRA representatives for inspection and photocopying during normal business hours.

3. *Program of operational tests and inspections; recordkeeping; annual summary on operational tests and inspections; electronic recordkeeping.* Proposed amendments to § 217.9 called for railroads to retain one copy of their operational test and inspection programs at all division headquarters and at the system headquarters. The final rule adopts this proposal with some significant modifications.

Proposed paragraph (a) is adopted unchanged, with one exception: A railroad must now conduct its operational tests and inspections in accordance with a program that it retains.

Paragraph (b) also departs from the proposed text. After November 21, 1994, a railroad must retain one copy of its current program of operational tests and inspections. The program must be updated with any subsequent amendments. These programs must be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests prescribed in the program are conducted (*i.e.*, the records availability may be division specific). In other words, if certain tests are not conducted in a certain division, that division headquarters need not retain a copy of the program prescribing those particular tests. The operational testing program must be made available to FRA representatives for inspection and photocopying during normal business hours and must be retained for three calendar years following the end of the year to which it relates.

The criteria requirements stated in existing § 217.9(b) (1)–(4) and (6) remain unchanged, and a conforming change is made to paragraph (b)(5): deletion of the reference to a program "filed with" FRA. Under final rule paragraph (b)(5), a railroad must begin conducting operational tests and inspections within 30 days after November 21, 1994 or the date of commencing operations, whichever is later. This requirement will not affect railroads that are currently in operation, given that the existing regulations already require railroads to begin their programs within 30 days after they file their operational testing programs.

Redesignated § 217.9(c) (formerly § 217.9(d)) requires a railroad to keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record must identify the officer administering the operational test and inspection and each employee tested. These requirements clarify the information requirements provided under existing § 217.9(d) by identifying specific data points each record must provide. These revisions will promote the examination of relevant information from captured data sources, enabling FRA to determine the effectiveness of a railroad's operational testing program. The operational test and inspection records must be retained for one

calendar year after the end of the year to which they relate at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted (*i.e.*, the records availability may be division specific). Additionally, railroads must make their operational test and inspection records available to FRA representatives for inspection and photocopying during normal business hours.

FRA has decided to organize all provisions in Part 217 pertaining to operational tests and inspections under § 217.9; therefore, § 217.13 introductory text and paragraphs (a) through (c) are removed and redesignated as § 217.9(d). New paragraph (d) requires railroads with 400,000 or more total manhours per year to compile an "annual summary" recounting the number, type, and result of each operational test and inspection conducted, stated according to operating divisions where applicable, which are the same requirements as provided under existing § 217.13(b). The summaries should be indexed in a well organized format to facilitate efficient and manageable review. FRA has also concluded that annual compilations of the total number of train miles and of the rate at which the railroad conducts operational tests and inspections provide limited useful information; therefore, these existing requirements are removed from the final rule. These compilations, redesignated "annual summaries on operational tests and inspections," must be made available at each division headquarters and at the system headquarters by March 1 of each calendar year. Such annual summaries are required to be retained at these locations for three calendar years after the end of the year to which they relate and made available to FRA representatives for inspection and photocopying during normal business hours.

New § 217.9(e) authorizes railroads to retain their operational testing programs, operational test and inspection records, and annual summaries on operational tests and inspections by electronic recordkeeping, subject to conditions stated in that provision. This provision provides an alternative for railroads retaining certain information as required in the regulations.

Each participating railroad must have the essential components of a computer system (*i.e.*, a desk-top computer and either a facsimile machine or a printer connected to the computer to retrieve and produce records for immediate review). The material retrieved in hard copy form must contain relevant information organized in a usable format to render the data completely understandable. The documents must be made available for FRA inspection during normal business hours, which FRA interprets as the time, any day of the week, when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Railroad Operating Rules and Radio Standards and Procedures regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the data base. Although FRA does not identify the management position capable of instituting changes in the data base, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to electronically retain its records must ensure the integrity of the information and prevent possible tampering of data, enabling FRA to fully execute its enforcement responsibilities.

4. *Program of instruction on operating rules; recordkeeping; electronic recordkeeping. Section 217.11* is revised to require that a railroad retain a copy of its instruction program on operating rules instead of filing a copy with the Federal Railroad Administrator. Paragraph (a), which mandates periodic instruction of employees whose activities are governed by the railroad's operating rules in accordance with a written program, remains unchanged, with the exception that the system headquarters of the railroad is to retain a copy of the entire instruction program and that the division headquarters for each division where an employee is instructed is to retain all portions of the copy of the program that the division applies and enforces. (In other words, the records availability at the division headquarters may be division specific.) Paragraph (b) mandates that after November 21, 1994, or 30 days before commencing operations, whichever is later, a railroad must make one copy of its current program and one copy of any subsequent revision available to FRA for inspection and photocopying during normal business hours. Paragraph (c) is added to authorize a railroad to retain by electronic recordkeeping its instruction program on operating rules, provided that certain conditions specified in § 217.9(e) (1)–(5) are met.

5. *Annual report on enforcement of part 219; information collection requirements.* The requirements formerly provided under *§ 217.13(d)*, "Annual report on enforcement of part 219," have been transferred to part 219 with the final rule publication of 49 CFR § 219.803. See final rule at 58 FR 68235 (1993). Because existing § 217.13 (a)–(c) is redesignated as § 217.9(d), § 217.13 is removed and existing § 217.15, "Information collection requirements," is redesignated as § 217.13. The removal of existing § 217.13 eliminates the information collection requirements provided under existing § 217.15(b)(4), redesignated § 217.13(b)(4), which is, therefore, removed.

6. *Definitions. Section 220.5* is amended by adding paragraphs (d) and (e), which define "division headquarters" and "system headquarters." These terms also appear in § 217.4 and are discussed previously in the preamble.

7. *Railroad operating rules; radio communications; recordkeeping. Section 220.21(b)* is amended by requiring railroads subject to Part 220 to retain one copy of their current radio operating rules and any subsequent revisions at the locations prescribed in newly added subparagraphs (1) and (2). Subparagraph (1) provides that Class I railroads, Class II railroads, the National Railroad Passenger Corporation, and railroads providing commuter service in a metropolitan or suburban area must retain their radio rules at all division headquarters and at the system headquarters. Under subparagraph (2), Class III railroads and all other railroads subject to this part but not subject to subparagraph (1) are required to retain their radio rules at their respective system headquarters. These records are required to be made available to FRA representatives for inspection and photocopying during normal business hours.

## Regulatory Impact

### *Executive Order 12866 and DOT Regulatory Policies*

This final rule has been evaluated in accordance with existing regulatory policies. The regulatory document is considered to be a nonsignificant regulatory action under E.O. 12866 and is a nonsignificant rule under § 5(a)(4) of DOT Regulatory Policies and Procedures [44 FR 11034, February 26, 1979] because it eliminates nonessential reporting requirements while maintaining a high level of safety. FRA has prepared and placed in the

rulemaking docket a regulatory evaluation addressing the economic impact of this rule. A copy of the regulatory evaluation may be reviewed and copied in Room 8201, 400 Seventh Street, S.W., Washington, D.C. 20590.

In its regulatory analysis, FRA found that railroads will derive several benefits with the implementation of this rule. First, the final rule eliminates or narrows the applicability of various requirements that railroads reproduce and mail to FRA certain records and reports of operating rules and practices, thereby reducing administrative and postage expenses. Although certain railroads will still have to submit particular documents to FRA, the final rule removes most processing and handling expenditures associated with filing the paperwork requirements under existing Part 217. Second, the final rule reduces Federal government labor costs necessary to examine, organize, and compile the information since most of the records will be retained at the appropriate railroad offices. Finally, railroads will be permitted to retain required information in an electronic format, thereby reducing storage and overhead costs and facilitating access to selected records. The regulatory evaluation does not quantify the reduction in costs available to railroads electing to exercise this option; therefore, this analysis does not reflect the economic benefits gained from electronic recordkeeping.

FRA estimates that, over a twenty-year period, this rule will cost the railroad industry a total of $786. The cost to the railroads to comply with this rule is about $311 for the first year and $25 for every year thereafter. This cost burden is attributed to the changes in recordkeeping requirements provided in the rule. The total benefits of this rule over a twenty-year period amount to about $449,628 for reduced labor, copying, and postage costs in both the railroad industry and government sector. In the first year, the savings are estimated to be $22,432 and $22,484 for each subsequent year. The benefits will be about 447.52 times the costs.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the rule, FRA concluded that it will not have any measurable impact on small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

*Paperwork Reduction Act*

The final rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501 *et seq.*) FRA has endeavored to minimize the paperwork burden associated with this rule. The regulatory provisions that contain information collection requirements and the estimated time necessary to fulfill these requirements are as follows:

| Section | Brief description | Estimated time (hours) |
|---|---|---|
| 217.7(a) | Filing one copy of a railroad's operating rules, timetables, and timetable special instructions with FRA. Note: Railroads may inform FRA in writing that the latest operating rules, timetables, and timetable special instructions filed with FRA remain currently in effect. The estimated time to prepare the letter is 30 minutes. Section 217.7(a)–(b) applies only to Class I railroads, Class II railroads, National Railroad Passenger Corporation (Amtrak), and commuter railroads. | 1 |
| 217.7(b) | Filing one copy of each amendment to a railroad's operating rules, timetables, and timetable special instructions with FRA. | .33 |
| 217.7(c) | Retaining one copy of a railroad's operating rules, timetables, and timetable special instructions at the railroad's system headquarters. Note: Section 217.7(c) applies only to Class III railroads. | .92 |
| 217.7(c) | Retaining one copy of each amendment to a railroad's operating rules, timetables, and timetable special instructions at the railroad's system headquarters. | .25 |
| 217.9(b) | Preparing and making one copy of a railroad's program for periodic performance of operational tests and inspections. The program must be retained at the railroad's system headquarters and all applicable division headquarters. | 9.92 |
| 217.9(b) | Preparing and making one copy of each amendment to a railroad's program for periodic performance of operational tests and inspections. The amendments must be retained at the railroad's system headquarters and all applicable division headquarters. | 1.92 |
| 217.9(c) | Conducting operational tests and inspections and recording the results thereof. The records must be retained at the railroad's system headquarters and all applicable division headquarters. | .25 |
| 217.9(d) | Compiling information and preparing the railroad's annual summary on operational tests and inspections. The annual summary must be retained at the railroad's system headquarters and all division headquarters. Note: Section 217.9(d) applies only to railroads with 400,000 or more manhours | 7 |
| 217.11(b) | Preparing and making one copy of a railroad's program of instruction on operating rules. The program must be retained at the railroad's system headquarters and all applicable division headquarters. | 9.92 |
| 217.11(b) | Preparing and making one copy of each amendment to a railroad's program of instruction on operating rules. The amendments must be retained at the railroad's system headquarters and all applicable division headquarters. | .92 |
| 220.21(b) | Retaining one copy of a railroad's operating rules with respect to radio communications. The radio rules, and any subsequent amendments thereto, must be retained at the railroad's system headquarters and all division headquarters (Class I railroads, Class II railroads, Amtrak, and commuter railroads) and system headquarters (Class III railroads). | (*) |

*Although § 220.21(b) requires railroads to collect certain information, FRA assumes that most railroads prepare their radio rules in conjunction with their operating rules as required by § 217.7. Therefore, FRA believes that the radio rules requirements will not impose any additional burden on the railroad industry than what is already required under § 217.7.

The estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. FRA solicits comments on the accuracy of the estimates, the utility of the information, and other methods that might be less burdensome to obtain this information.

Persons desiring to comment regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should submit their views in writing to: Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8301, Washington, D.C. 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer for FRA (OMB No. 2130–0035), New Executive Office Building, 726 Jackson Place, N.W., Room 3201, Washington, D.C. 20503. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

*Environmental Impact*

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

*Federalism Implications*

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

**List of Subjects**

*49 CFR Part 217*

Railroad operating rules, Railroad safety, Penalties, Reporting and recordkeeping requirements.

*49 CFR Part 220*

Radio standards and procedures, Railroad operating rules, Radio communications, Reporting and recordkeeping requirements.

**The Final Rules**

In consideration of the foregoing, part 217, title 49, Code of Federal Regulations is amended to read as follows:

**PART 217—[AMENDED]**

1. The authority citation for Part 217 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20111, 20112, 21301, 21304, 21311 (1994) (formerly codified at 45 U.S.C. 431, 437, 438); Pub. L. 103–272 (1994); and 49 CFR 1.49(m).

2. Section 217.4 is added to read as follows:

**§ 217.4 Definitions.**

As used in this part—

*Class I, Class II,* and *Class III* have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

*Division headquarters* means the location designated by the railroad where a high-level operating manager (*e.g.*, a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

*System headquarters* means the location designated by the railroad as the general office for the railroad system.

3. Section 217.7 is revised to read as follows:

**§ 217.7 Operating rules; filing and recordkeeping.**

(a) On or before December 21, 1994, each Class I railroad, Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area that is in operation on November 21, 1994, shall file with the Federal Railroad Administrator, Washington, DC 20590, one copy of its code of operating rules, timetables, and timetable special instructions which were in effect on November 21, 1994. Each Class I railroad, each Class II railroad, and each railroad providing commuter service in a metropolitan or suburban area that commences operations after November 21, 1994, shall file with the Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations.

(b) After November 21, 1994, each Class I railroad, each Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area shall file each new amendment to its code of operating rules, each new timetable, and each new timetable special instruction with the Federal Railroad Administrator within 30 days after it is issued.

(c) On or after November 21, 1994, each Class III railroad and any other railroad subject to this part but not subject to paragraphs (a) and (b) of this section shall keep one copy of its current code of operating rules, timetables, and timetable special instructions and one copy of each subsequent amendment to its code of operating rules, each new timetable, and each new timetable special instruction, at its system headquarters, and shall make such records available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

4. Section 217.9 is amended by revising paragraphs (a), (b) introductory text, (b)(5), (c) and (d), and adding paragraph (e) to read as follows:

**§ 217.9 Program of operational tests and inspections; recordkeeping; annual summary on operational tests and inspections; electronic recordkeeping.**

(a) *Requirement to conduct operational tests and inspections.* Each railroad to which this part applies shall periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the tests are conducted.

(b) *Written program of operational tests and inspections.* On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to which this part applies shall retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted, for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. The program shall—* * *

(5) Begin within 30 days after November 21, 1994, or the date of

commencing operations, whichever is later; and

* * * * *

(c) *Records of individual tests and inspections.* Each railroad to which this part applies shall keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record shall specify the officer administering the test and inspection and each employee tested. These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(d) *Annual summary on operational tests and inspections.* Before March 1 of each calendar year, each railroad to which this part applies, except for a railroad with less than 400,000 total manhours, shall retain, at each of its division headquarters and at the system headquarters of the railroad, one copy of a written summary of the following with respect to its previous year's activities: The number, type, and result of each operational test and inspection, stated according to operating divisions where applicable, that was conducted as required by paragraphs (a) and (b) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(e) *Electronic recordkeeping.* Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in paragraphs (b) through (d) of this section, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of the Federal Railroad Administration with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

5. Section 217.11 is amended by revising the heading and by revising paragraphs (a), (b) introductory text, (b)(4), and (c) to read as follows:

**§ 217.11 Program of instruction on operating rules; recordkeeping; electronic recordkeeping.**

(a) To ensure that each railroad employee whose activities are governed by the railroad's operating rules understands those rules, each railroad to which this part applies shall periodically instruct each such employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the employee is instructed.

(b) On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to which this part applies shall retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a) of this section and one copy of each subsequent amendment to that program. The system headquarters of the railroad shall retain one copy of all these records; the division headquarters for each division where the employees are instructed shall retain one copy of all portions of these records that the division applies and enforces. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. This program shall—

* * *

(4) Begin within 30 days after November 21, 1994, or the date of commencing operations, whichever is later; and

* * * * *

(c) Each railroad to which this part applies is authorized to retain by electronic recordkeeping its program for periodic instruction of its employees on operating rules provided that the requirements stated in § 217.9(e)(1) through (5) of this part are satisfied.

6. Section 217.13, "Annual report," is removed, and § 217.15, "Information collection," is redesignated as § 217.13.

7. Redesignated § 217.13 is amended by removing paragraph (b)(4).

8. Appendix A to Part 217 is revised to read as follows:

APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES [1]

| Section | Violation | Willful violation |
|---|---|---|
| 217.7 Operating rules: | | |
| (a) | $2,500 | $5,000 |
| (b) | $2,000 | $5,000 |
| (c) | $2,500 | $5,000 |
| 217.9 Operational tests and inspections: | | |
| (a) Program | $5,000 | $7,500 |
| (b) Record of program | 2,500 | $5,000 |
| (c) Record of tests and inspections | $5,000 | $7,500 |
| (d) Annual summary | $5,000 | $7,500 |
| 217.11 Program of instruction on operating rules: | | |
| (a) | $5,000 | $7,500 |
| (b) | $2,500 | $5,000 |

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

In consideration of the foregoing, part 220, title 49, Code of Federal Regulations is amended to read as follows:

## PART 220—[AMENDED]

1. The authority citation for Part 220 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20111, 20112, 21301, 21304, 21311 (1994) (formerly codified at 45 U.S.C. 431, 437, 438); Pub. L. 103–272 (1994); and 49 CFR 1.49(m).

2. In § 220.5, paragraphs (d) and (e) are added to read as follows:

**§ 220.5 Definitions.**

* * * * *

(d) *Division headquarters* means the location designated by the railroad where a high-level operating manager (*e.g.*, a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

(e) *System headquarters* means the location designated by the railroad as the general office for the railroad system.

3. Section 220.21 is amended by revising the heading and paragraph (b) to read as follows:

**§ 220.21 Railroad operating rules; radio communications; recordkeeping.**

* * * * *

(b) On or after November 21, 1994, or 30 days before commencing to use radio communications in connection with railroad operations, whichever is later, each railroad shall retain one copy of its current operating rules with respect to radio communications, and of each amendment to these rules, at the locations prescribed in paragraphs (b)(1) and (2) of this section. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(1) Each Class I railroad, each Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area shall retain such rules at each of its division headquarters and at the system headquarters of the railroad; and

(2) Each Class III railroad and any other railroad subject to this part but not subject to paragraph (b)(1) of this section shall retain such rules at the system headquarters of the railroad.

Issued in Washington, D.C. on August 12, 1994.

**Jolene M. Molitoris,**

*Administrator, Federal Railroad Administration.*

[FR Doc. 94–20457 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–06–P

# Proposed Rules

Federal Register
Vol. 59, No. 161
Monday, August 22, 1994

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 THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

[GL-549-87]

RIN 1545-AI24

## Payment of Internal Revenue Tax by Check or Money Order and Liability of Financial Institutions for Unpaid Taxes

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains a proposed regulatory amendment regarding payments with respect to internal revenue taxes and internal revenue stamps by check or money order. Changes to the applicable tax law were made by the Tax Reform Act of 1984 (TRA). These amendments, which are intended to conform the regulations to the change in the statute, apply to persons making payments with respect to internal revenue taxes or stamps by check or money order, and to financial institutions that issue or guarantee payment of checks or money orders.

**DATES:** Written comments and requests for a public hearing must be received by October 21, 1994.

**ADDRESSES:** Send submissions to: Internal Revenue Service, Attn: CC:DOM:CORP:T:R (GL-549-87), room 5228, 1111 Constitution Avenue, NW, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Walker 202-622-4208 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

*Background*

This notice of proposed rulemaking contains proposed changes to § 301.6311-1, to reflect amendments made to section 6311 by section 448(a) of the Tax Reform Act of 1984, Pub. L. 98-369 (TRA).

*Explanation of Provisions*

Section 6311(a) of the Internal Revenue Code provides that the IRS may receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions specified in the regulations. If money orders or certain kinds of checks tendered in payment are not duly paid, then section 6311(b)(2) provides the United States with a lien against all the assets of the drawee or issuer for the amount of the check or money order. Before its amendment, this rule applied, in the case of checks, only with respect to certified, treasurer's, or cashier's checks drawn on a bank or trust company. Section 448(a) of TRA expanded section 6311(b)(2) to include guaranteed drafts drawn on financial institutions other than banks and trust companies. The amendments to the regulations reflect these changes in the statute and permit payment by guaranteed draft in any case in which the regulations under prior law permitted payment by certified, treasurer's, or cashier's check. In addition, the regulations provide a definition of "financial institution." Since the Bureau of Alcohol, Tobacco, and Firearms now has its own separate regulations governing the receipt of payment for certain taxes by check or money order, which appear in 27 CFR, provisions of these regulations referring to the Bureau of Alcohol, Tobacco, and Firearms have been removed.

*Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

*Comments on Proposed Regulations*

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

*Drafting Information*

The proposed regulations were developed in the General Litigation Division of the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate tax, Excise taxes, Gift tax, Income taxes, Penalties, Reporting and recordkeeping requirements.

*Proposed Amendments to the Regulations*

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Paragraph 2.** Section 301.6311-1 is amended by:

1. Revising the first, second, and last sentences of paragraph (a)(1)(i).
2. Revising paragraph (a)(2).
3. Removing paragraph (a)(3).
4. Revising paragraph (b).
5. Adding paragraphs (d) and (e).
6. The additions and revisions read as follows:

**§ 301.6311-1 Payment by check or money order.**

(a) * * *

(1) * * *

(i) District directors, Service Center directors, and Compliance Center directors (director) may accept checks or drafts drawn on any financial institution incorporated under the laws of the United States or under the laws of any

State, the District of Columbia, or any possession of the United States, or money orders in payment for internal revenue taxes, provided the checks, drafts, or money orders are collectible in United States currency at par, and subject to the further provisions contained in this section. The director may accept the checks, drafts, or money orders in payment for internal revenue stamps to the extent and under the conditions prescribed in paragraph (a)(2) of this section. * * * However, the director may refuse to accept any personal check whenever he or she has good reason to believe that such check will not be honored upon presentment.

* * * * *

(2) *Payment for internal revenue stamps.* The director may accept checks, drafts, and money orders described in paragraph (a)(1) of this section in payment for internal revenue stamps. However, the director may refuse to accept any personal check whenever he or she has good reason to believe that such check will not be honored upon presentment.

(b) *Checks or money orders not paid*—(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check or draft) or money order in payment for taxes or stamps is not released from liability until the check, draft, or money order is paid; and, if the check, draft, or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if the check, draft, or money order had not been tendered.

(2) *Liability of financial institutions and others.* If any certified, treasurer's, or cashier's check, or other guaranteed draft, or money order, is not duly paid, the United States shall have a lien for the amount of the check or draft upon all assets of the financial institution on which drawn, or for the amount of the money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such financial institution or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution. In addition, the Government has the right to exact payment from the person required to make the payment.

* * * * *

(d) *Financial institution.* For purposes of section 6311 and this section, *financial institution* includes but is not limited to—

(1) A bank or trust company (as defined in section 581);

(2) A domestic building and loan association (as defined in section 7701(a)(19));

(3) A mutual savings bank (including but not limited to a mutual savings bank as defined in section 591(b));

(4) A credit union (including both state and federal credit unions, and including but not limited to a credit union as defined in section 501(c)(14)); and

(5) A regulated investment company (as defined in section 851(a)).

(e) *Effective date.* The rules in this section are [proposed to be effective on August 19, 1994].

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 94–20221 Filed 8–19–94; 8:45 am]

BILLING CODE 4830–01–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 86

[A–94–13; FRL–5030–1]

### Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for 1996 and 1998 Model Year Emission Standards for Heavy-Duty Vehicles and Engines

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing that nonconformance penalties (NCPs) be made available for specific emission standards taking effect in the 1996 and 1998 model years. In general, the availability of NCPs allows a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) (which include heavy light-duty trucks) whose engines or vehicles fail to conform with certain applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. The specific emission standards for which NCPs have been considered in this rulemaking are the 1996 and later model year Tier 1 standards for heavy light-duty trucks, the 1996 and later model year Particulate Matter (PM) standard for urban bus applications, and the 1998 and later model year heavy-duty diesel engine oxides of nitrogen ($NO_x$) standard.

EPA is proposing to offer NCPs for the 1996 and later model year particulate matter (PM) standard of 0.10 g/mile for Light Duty Trucks 3 (LDT3) at full useful life. EPA has considered, but is not proposing to offer NCPs for the other standards. The proposed upper limit associated with the LDT3 PM standard is the previous diesel-fueled LDT3 vehicle standard of 0.13 g/mi.

**DATES:** *Public comment:* All comments should be received on or before September 21, 1994 or within 30 days following the conclusion of the public hearing, if one is held.

*Public hearing:* If requested, EPA will hold a public hearing regarding this proposed rule on September 21, 1994, beginning at 10:00 a.m. Any person desiring to present oral testimony must request the hearing by noon, EDT, September 6, 1994. Pursuant to section 307 of the Clean Air Act, the record of the hearing, if held, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal or other information.

**ADDRESSES:** *Public comment:* Send written comments to: Public Docket A–94–13 at the Air Docket (LE–131), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If possible, an additional copy of the written comments should be submitted to the EPA contact person listed below.

*Public hearing:* The hearing, if requested, will take place at a location to be determined. Any person wishing to attend should call the EPA contact person, listed below, to determine if the hearing will be held.

Requests for, or questions about the hearing should be directed to the EPA contact person listed below. To the extent possible, any person desiring to participate in a hearing should, prior to the hearing, notify the EPA contact person of his or her intention and submit an outline of the points to be discussed and the time needed to discuss these points.

*Public docket:* Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–94–13 at the Air Docket of the US Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, and are available for review in room M–1500 between the hours of 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leo Breton, Manufacturers Operations Division (6405–J), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 233–9245.

SUPPLEMENTARY INFORMATION:

## I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or HDVs which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which the standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. At the same time, conforming manufacturers would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on money saved by the technological laggard and its customer from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). The light-duty truck (LDT) classification includes trucks that have a GVWR of 8500 lbs or less. Therefore, certain LDTs may be classified as HDVs. Historically, LDTs up through 6000 lbs GVWR have been considered "light light-duty trucks" (LLDTs) and LDTs between 6,001 and 8,500 pounds GVWR have been considered "heavy light-duty trucks" (HLDTs). Based on various new requirements established by the Clean Air Act Amendments of 1990, each of these two light truck categories has been further subdivided into groups by weight.

The LLDTs are classified by weight based on "loaded vehicle weight," or LVW, which maintains its current definition: curb weight plus 300 lbs. The trucks up through 3750 lbs LVW make up a subclass called light-duty-trucks-1, or LDT1. Those greater than 3750 lbs LVW but less than or equal to 6000 lbs GVWR are the subclass light-duty-trucks-2, or LDT2.

The HLDTs are divided at 5750 lbs "adjusted loaded vehicle weight," or ALVW. Adjusted loaded vehicle weight is the average of the curb weight and the GVWR. The HLDTs that are up through 5750 lbs ALVW are called light-duty trucks-3, or LDT3. Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR are light-duty-trucks-4, or LDT4. The LDT3 and LDT4 subclasses make up the HLDT vehicle class. Since NCPs are only offered for heavy duty vehicles or engines, this notice addresses only emission standards for light duty trucks of the LDT3 and LDT4 categories.

Section 206(g)(3) requires that NCPs:

- Account for the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use, unless, for the case of HLDTs, the compliance level is below the in-use standard. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

## II. Availability of Nonconformance Penalties

### *A. Review of NCP Eligibility Criteria*

The generic NCP rule (Phase I) established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. See 40 CFR 1103–87. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent.

Second, substantial work must be required in order to meet the emission standard. EPA considers "substantial work" to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, in order to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work.

Third, a technological laggard must be likely to develop. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. EPA will make the determination that a technological laggard is likely to develop, based in large part on the above two criteria. However, these criteria are not always sufficient to determine the likelihood of the development of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop.

### *B. Phase II NCPs*

The above criteria were used to determine eligibility for NCPs during Phase II of the NCP rulemaking (50 FR 53454, December 31, 1985). NCPs were offered for the following 1987 and 1988 model year standards: the particulate matter (PM) standard for 1987 diesel-fueled light-duty trucks with loaded vehicle weight in excess of 3750 pounds (LDDT2s), the 1987 gasoline-fueled light HDE (LHDGE) HC and CO emission standards, the 1988 diesel-fueled HDE (HDDE) PM standard, and the 1988 HDDE $NO_x$ standard. As discussed in the Phase II preamble, NCPs were considered, but not offered, for the 1987 HLDT $NO_x$ standard and the 1988 (later, the 1990) gasoline-fueled HDE (HDGE) $NO_x$ standard.

### *C. Phase III NCPs*

The availability of NCPs for 1991 model year HDE standards was addressed during Phase III of the NCP rulemaking (55 FR 46622, November 5, 1990). NCPs were offered for the following: the 1991 HDDE PM standard for petroleum-fueled urban buses, the 1991 HDDE PM standard for petroleum-

fueled vehicles other than urban buses, the 1991 petroleum-fueled HDDE $NO_X$ standard, and the PM emission standard for 1991 and later model year petroleum-fueled light-duty diesel trucks greater than 3750 lbs loaded vehicle weight (LDDT2s). As discussed in the Phase III preamble, NCPs were also considered but not offered for the methanol-fueled heavy-duty diesel engine and heavy-duty gasoline engine standards as it was concluded that those standards did not meet the eligibility criteria established in the generic rule.

In addition, Phase III of the NCP rulemaking described how NCPs would be integrated into the HDE $NO_X$ and PM averaging program.

*D. Phase IV NCPs*

The availability of NCPs for HDVs and HDEs subject to the 1994 and later model year emission standards for particulate matter (PM) was addressed by Phase IV of the NCP rulemaking (58 FR 68532, December 28, 1993). NCPs were offered for the following: the 1994 and later model year PM standard for heavy-duty diesel engines (HDDEs) used in urban buses, and the 1994 and later model year PM standard for HDDEs used in vehicles other than urban buses. NCPs were also considered, but not offered for the 1994 and later model year methanol-fueled HDE PM standard and the 1994 and later model year cold carbon monoxide (CO) standard for heavy light-duty gasoline fueled trucks.

*E. NCP Eligibility for 1996 Tier 1 HLDT, 1996 Urban Bus PM, and 1998 HDE $NO_X$, and Later Emission Standards for Petroleum-Fueled HDEs and HDVs*

NCPs were not considered for the Tier 1 "in-use" standards since NCPs are a mechanism to allow manufacturers to certify engine families, not to assist manufacturers in complying with "in-use" standards. The remainder of this proposal addresses whether NCPs should be made available for the 1996 Urban Bus PM standard of 0.05 g/BHP-hr, the 1998 HDE $NO_X$ standard of 4.0 g/BHP-hr, and the following Tier 1 standards applicable to 1996 HLDTs at the intermediate [1] useful life and at the full [2] useful life:

A. LDT3

1. Non-methane hydrocarbon (NMHC) standard.
   a. 0.32 g/mi at intermediate useful life;
   b. 0.46 g/mi at full useful life;
2. Carbon Monoxide (CO) standard.
   a. 4.4 g/mi at intermediate useful life;
   b. 6.4 g/mi at full useful life;
3. Oxides of Nitrogen ($NO_X$) standard.
   a. 0.70 [3] g/mi at intermediate useful life;
   b. 0.98 g/mi at full useful life;
4. Particulate Matter (PM) standard of 0.10 g/mi at full useful life;

B. LDT4

1. NMHC standard.
   a. 0.39 g/mi at intermediate useful life;
   b. 0.56 g/mi at full useful life;
2. CO standard.
   a. 5.0 g/mi at intermediate useful life;
   b. 7.3 g/mi at full useful life;
3. $NO_X$ standard.
   a. 1.1 [4] g/mi at intermediate useful life;
   b. 1.53 g/mi at full useful life;
4. PM standard of 0.12 g/mi at full useful life;

EPA's consideration of NCPs for each of these standards is discussed below.

a. 1996 Tier 1 Non-Methane Hydrocarbon (NMHC) Standard for LDT3

Since there is no NMHC standard for earlier model year LDT3s, the new NMHC standard represents an increase in stringency over the THC standard for previous model years, satisfying the first eligibility criterion. EPA acknowledges that one manufacturer has indicated that it may have difficulty complying with this standard. Based on the manufacturer's planned strategy, however, EPA does not believe that substantial work, as described above, will be necessary to meet the new standard for either the intermediate useful-life level of 0.32 g/mi or the full useful-life level of 0.46 g/mi, since it does not represent a major modification of existing technology. EPA also does not believe that a technological laggard is likely to develop, based on discussions with vehicle manufacturers. For these reasons, EPA is not proposing to offer NCPs for this standard.

b. 1996 Tier 1 CO Standard for LDT3

EPA recognizes that the new CO standard of 6.4 g/mi at full useful life represents an increase in stringency over the prior standard of 10 g/mi at full useful life for LDT3s, satisfying the first eligibility criterion. Based on 1993 model year certification levels, only one manufacturer is currently producing LDT3 vehicles which would not meet the new standard at full useful life. Since this manufacturer does not anticipate difficulty in meeting the new CO standards, EPA does not believe that a technological laggard is likely to develop. The half useful-life standard of 4.4 g/mi is considered by EPA and manufacturers to be less difficult to meet compared with the full useful life standard. For these reasons, EPA is not proposing to offer NCPs for these standards.

c. 1996 Tier 1 $NO_x$ Standard for LDT3

EPA recognizes that the new $NO_X$ standard of 0.98 g/mi at full useful life represents an increase in stringency over the prior standard of 1.7 g/mi at full useful life for LDT3s, satisfying the first eligibility criterion. Based on discussions with current manufacturers of vehicles which, if not modified, would exceed the new $NO_X$ standard at full useful life, EPA believes those manufacturers possess the desirable technology to meet the new standard, and EPA does not believe that a technological laggard is likely to develop among manufacturers of that group. The half useful-life standard for non-diesel vehicles of 0.70 g/mi is considered by EPA and manufacturers to be less difficult to meet compared with the full useful life standard.

For the case of diesel-fueled LDT3s, however, EPA believes the increased stringency is likely to require substantial work to comply with the PM standard because most conventional means of reducing $NO_X$ emissions from diesel-fueled engines result in increased PM emissions from such engines. Since EPA believes that $NO_X$ emissions of diesel-fueled vehicles will be lowered by adjusting engine operating and design parameters, not requiring significant work, EPA is not proposing to offer NCPs for the new $NO_X$ standards for either gasoline fueled LDT3s or diesel-fueled LDT3s. However, significant work may be required to reduce any resulting increase in PM emissions or reduced decrease in PM emissions for diesel-fueled vehicles. The interrelationship between $NO_X$ emissions and PM emissions for diesel-fueled vehicles will be taken into account when considering NCPs for the new PM standard, as discussed below.

d. 1996 Tier 1 PM Standard for LDT3

There is no previous PM standard for non-diesel-fueled LDT3s. Since it is well-recognized in the industry that non- diesel fueled vehicles emit very low levels of particulate matter, no work should be required by manufacturers to meet this new standard and no technological laggard should develop. Therefore, EPA is not proposing to offer NCPs for those vehicles.

EPA recognizes that the new PM standard of 0.10 g/mi at full useful life represents an increase in stringency over the prior standard of 0.13 g/mi at full useful life for diesel-fueled LDT3s, satisfying the first eligibility criterion.

[1] Intermediate useful life is 5 years or 50,000 miles.

[2] Full useful life is 11 years or 120,000 miles.

[3] There is no intermediate useful life standard for diesel-fueled vehicles.

[4] There is no intermediate useful life standard for diesel-fueled vehicles.

Based on discussions with current manufacturers, at least one manufacturer is adapting technology from similar engines, but having different service requirements. Significant work will probably be required for the technology adaptation specified by that manufacturer, especially when considering the interrelationship of the $NO_X$ and PM emissions of diesel-fueled engines, as stated above. EPA also believes that a technological laggard may develop because of the amount of work involved. For these reasons, EPA is proposing to offer NCPs for diesel-fueled LDT3s at the full useful life. The proposed penalty rates are discussed below.

e. 1996 Tier 1 Non-Methane Hydrocarbon (NMHC) Standard for LDT4

There is no NMHC standard for earlier model year LDT4s. Both EPA and vehicle manufacturers believe that the NMHC standard represents an increase in stringency over the THC standard for previous model year LDT4s, satisfying the first eligibility criterion. The same manufacturer that expressed concern in meeting the NMHC standard for LDT3 has similar concerns in meeting this standard and will use a similar strategy to lower the emissions. For the same reasons stated in the above discussion of the NMHC standard for LDT3s, EPA does not propose to offer NCPs for the NMHC standard at either the intermediate or the full useful life.

f. 1996 Tier 1 CO Standard for LDT4

EPA recognizes that the new CO standard of 7.3 g/mi at full useful life represents an increase in stringency over the prior standard of 10 g/mi at full useful life for LDT4s, satisfying the first eligibility criterion. Based on discussions with current manufacturers of affected vehicles, EPA believes that manufacturers will not have difficulty in meeting the new standard. Since there are no 1993 model year LDT4s with CO certification levels higher than the new standard at full useful life, EPA does not believe that a technological laggard is likely to develop. The half useful-life standard of 5.0 g/mi is generally considered by EPA and manufacturers to be less difficult to meet compared with the full useful life standard of 7.3 g/mi. For these reasons, EPA is not proposing to offer NCPs for these standards.

g. 1996 Tier 1 $NO_X$ Standard for LDT4

EPA recognizes that the new $NO_X$ standard of 1.53 g/mi at full useful life represents some increase in stringency over the prior standard of 1.7 g/mi at full useful life for LDT4s, satisfying the first eligibility criterion. Based on discussions with current manufacturers of affected vehicles, and based on the fact that there were no model year 1993 LDT4s certified which would exceed the new standard at full useful life, EPA believes that substantial work, as described above, will not be required of manufacturers and that a technological laggard is not likely to develop. The half useful-life standard for non-diesel vehicles of 1.10 g/mi is generally considered by EPA and manufacturers to be less difficult to meet compared with the full useful life standard. For these reasons, EPA does not propose to offer NCPs for the new LDT4 $NO_X$ standards.

h. 1996 Tier 1 PM Standard for LDT4

EPA recognizes that the new PM standard of 0.12 g/mi at full useful life represents an increase in stringency over the prior standard of 0.13 g/mi at full useful life for LDT4s, satisfying the first eligibility criterion. As in the case of non-diesel LDT3s, no work should be required to meet the new PM standard for non-diesel LDT4s. And based on discussions with current manufacturers of diesel-fueled LDT4 vehicles and on 1993 model year certification levels, EPA does not believe that a technological laggard is likely to develop or that substantial work, as described above, will be required to meet the new PM standard. For these reasons, EPA is not proposing to offer NCPs for the new LDT4 PM standard.

i. 1996 HDDE Urban Bus PM Standard

The 1996 HDDE urban bus PM standard of 0.05 g/BHP-hr is more stringent than the previous 1994 0.07 g/BHP-hr PM standard it is superseding. EPA recognizes that some work may be necessary for the urban bus engine manufacturers to comply with the new standard. Based on discussions with those manufacturers, EPA does not believe that a technological laggard is likely to exist. Reinforcing that belief is the fact that the 0.05 g/BHP-hr standard was originally proposed as a 1994 standard. Detroit Diesel Corporation successfully argued that they could not effectively comply by 1994, and that if the 0.05 g/BHP-hr standard was delayed until 1996, and a standard of 0.07 g/BHP-hr was adopted in 1994, compliance could be achieved more efficiently. Furthermore, compliance with the 0.05 g/BHP-hr standard has been demonstrated in certification using a particulate trap system. And a catalyst equipped 1994 urban bus engine tested as low as 0.05 g/bhp-hr, although it certified to 0.07 g/bhp-hr. For these reasons, EPA is not proposing to offer NCPs for the 1996 0.05 g/BHP-hr PM standard for HDDE used for urban buses.

j. 1998 HDE $NO_X$ Standard

EPA acknowledges that the 1998 HDE $NO_X$ standard of 4.0 g/BHP-hr is an increase in stringency over the present 5.0 g/BHP-hr standard. EPA also believes, based on discussions with current manufacturers of HDEs, that additional work will be required to comply with the new standard. Improvements to turbochargers, conversion of remaining mechanical fuel injection systems to electronic control, and, in some cases, the use of exhaust gas catalytic converters will be necessary. But, based on those same discussions with manufacturers, and considering the fact that the standard does not become effective for an additional four years from this time, EPA believes that a technological laggard is not likely to develop. Therefore, EPA does not propose to offer NCPs for the 1998 HDE $NO_X$ standard.

## III. Penalty Rates

This proposed rule is the most recent in a series of NCP rulemakings. The discussion of penalty rates in the Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference. This section briefly reviews the penalty rate formula and discusses how EPA arrived at the penalty rates in this proposed rule. Emphasis will be placed on procedures different from those used to derive penalty rates during Phase II, Phase III, or Phase IV.

### *A. Parameters*

As in the previous NCP rules, EPA is specifying values for the following parameters in the NCP formula for each standard: $COC_{50}$, $COC_{90}$, $MC_{50}$, and F. The NCP formula is the same as that promulgated in the Phase I rule.

$COC_{50}$ is an estimate of the industrywide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. $COC_{50}$ is based on typical engine technology, as nearly as EPA can identify it. As in the previous NCP rules, costs include additional manufacturer costs and additional owner costs. The other NCP rules did not include certification costs in the calculation of $COC_{50}$, and none

will be allowed in this proposed rule because both complying and noncomplying manufacturers must incur certification costs.

$COC_{90}$ is EPA's best estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. $COC_{90}$ is based on a near worst case technology, as nearly as EPA can identify it. $COC_{90}$, like $COC_{50}$, includes both manufacturer and owner costs, but not certification costs.

$MC_{50}$ is an estimate of the industrywide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. $MC_{50}$ is measured in dollars per g/BHP-hr for HDEs and in dollars per gram per mile (g/mi) for LDTs.

F is a factor used to derive $MC_{90}$, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. $MC_{90}$ is defined as being the slope of the penalty rate curve near the standard and is equal to $MC_{50}$ multiplied by F. For this rulemaking, as was the case in the previous NCP rules, EPA has determined that no reasonable estimate of $MC_{90}$ can be made based on existing marginal cost data and has thus set F at a presumptive value of 1.2. This approach was generally supported by commenters on the past NCP rulemakings.

*B. Parameter Values and Upper Limit*

The derivation of the proposed cost parameters is described in a support document entitled "Calculation of Nonconformance Penalty Rates for 1996 and Later Model Year LDT3 Particulate Matter (PM) Standards," which is available in the public docket for this rulemaking. The upper limits applicable to a pollutant emission standard shall be determined as per §86.1104–91.

**1996 Tier 1 Particulate Matter (PM) Standard of 0.10 g/mi for LDT3 at Full Useful Life**

EPA proposes that the following values (in July, 1993 dollars) be used in the NCP formula for the 1996 and later model year Tier 1 0.10 g/mi PM standard for LDT3 at full useful life.

$COC_{50}$ = $557
$COC_{90}$ = $1178
$MC_{50}$ = 557/(.13-.10) = $18,567
F = 1.2

The values of the compliance parameters are based on the cost of projected engine modifications and the use of an oxidation catalyst for PM reduction as outlined in "Calculation of Nonconformance Penalty Rates for 1996 and Later Model Year LDT3 Particulate Matter (PM) Standards". While the possibility of complying with the PM standard using a particulate trap exists, it is not considered by EPA or industry to be a likely solution.

Since a previous PM standard of 0.13 g/mi exists, EPA is proposing that the upper limit which cannot be exceeded by LDT3 vehicles shall be 0.13 g/mi.

**IV. Administrative Designation and Regulatory Analysis**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review. This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1996 Tier 1 PM standard for LDT3s. Without this proposed rule, a manufacturer experiencing difficulty in complying with this new emission standard (after the use of credits) has only two alternatives: fix the nonconforming engines for the associated model years or not sell them at all. NCPs provide manufacturers with additional time to bring their engines into conformity.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**V. Economic Impact**

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If no HDE manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a SEA has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty for an engine that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

**VI. Environmental Impact**

When evaluating the environmental impact of this proposed rule, one must keep in mind that, under the Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain conditions. This mechanism would allow

manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers out of the market, NCPs provide flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be possible. By design, NCPs encourage the technological laggard that is using NCPs to reduce emission levels to the more stringent standard as quickly as possible.

### VII. Compliance With Regulatory Flexibility Act

Under section 603 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. None of the affected manufacturers could be classified as small. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

Some small entities do exist as manufacturers' contractors for the testing of engines for Production Compliance Audits (PCAs). It is EPA's practice to conduct PCA scheduling (namely, tests per day limitations) in such a way as to consider the staff and manpower capabilities of such contractors and avoid any problems. The result is that these entities are not adversely affected. Thus, I certify that this proposed rule will not have any adverse economic impact on a substantial number of small entities.

### VIII. Information Collection Requirements

This proposed rule requires that manufacturers perform certain record keeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 USC 3501, *et seq.*, provides that reporting and record keeping requirements be approved by OMB before they can be enforced by EPA. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060–0132). At the time of the final rulemaking the Agency will submit an Inventory Correction Worksheet to OMB amending the approved burden hours to reflect the additional reports required by this rulemaking. However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

### List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 4, 1994.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 86, is proposed to be amended as follows:

## PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

**Authority:** Secs. 202, 203, 206, 207, 208, 215, 301(a), Clean Air Act as amended ( 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

2. Section 86.1105–87 of subpart L is proposed to be amended by revising paragraph (e) and adding paragraph (g) to read as follows:

**§ 86.1105–87 Emission standards for which nonconformance penalties are available.**

* * * * *

(e) The values of $COC_{50}$, $COC_{90}$, and $MC_{50}$ in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of $COC_{50}$, $COC_{90}$, and $MC_{50}$ in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of $COC_{50}$, $COC_{90}$, and $MC_{50}$ in paragraph (f) of this section are expressed in December 1991 dollars. The values of $COC_{50}$, $COC_{90}$, and $MC_{50}$ in paragraph (g) of this section are expressed in July 1993 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. The method was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM, 1916 Race Street, Philadelphia, PA 19103, and is also available for inspection as part of Docket A–91–06, located at the Central Docket Section, EPA, 401 M Street, SW, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

* * * * *

(g) Effective in the 1996 model year, NCPs will be available for the following emission standard:

(1) Light-duty truck 3 diesel-fueled vehicle at full useful life (as defined in § 86.094–2) particulate matter emission standard of 0.10 g/mi.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(a):

(A) $COC_{50}$: $557.

(B) $COC_{90}$: $1178.

(C) $MC_{50}$: $18,567 per gram per mile;

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.094–9(a)(1)(ii) in accordance with § 86.1113–87(h): 0.011.

(2) [Reserved]

[FR Doc. 94–19769 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 721

**[OPPTS–50621; FRL–4872–1]**

**RIN 2070–AB27**

## Dipropylene glycol dimethyl ether; Proposed Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as modified propylene glycol ether, which is the subject of premanufacture notice (PMN) P–93–

507. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

**DATES:** Written comments must be received by EPA on or before September 21, 1994.

**ADDRESSES:** All comments must be sent in triplicate to: Environmental Protection Agency, OPPT Document Control Officer (7407), 401 M St., SW., Rm. E–G99, Washington, DC 20460. Comments that are claimed as confidential business information (CBI) must be clearly marked CBI. If CBI is claimed, three additional copies of the comments without the CBI must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection in the TSCA Nonconfidential Information Center (NCIC) located in Rm. NE–B607. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50621. Unit VI. of this preamble contains additional information on submitting comments containing information claimed as CBI.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the substance identified as modified propylene glycol ether for the significant new uses described herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

## I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUN. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

## II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. Regulatory provisions covering user fees applicable to significant new use notices are codified at 40 CFR part 700 under the authority of TSCA section 26(b). Interested persons may refer to these sections for further information.

## III. Background

EPA is proposing to establish significant new use and recordkeeping requirements for the chemical dipropylene glycol dimethyl ether. The proposed SNUR designates as significant new uses:

(1) Any manner or method of manufacturing, importing, or processing associated with any use of the substance without the use of dermal protection, including gloves, that provides an impervious barrier to the substance.

(2) Annual manufacture and importation volume for any use greater than 4 times the yearly volume specified in the PMN for the substance (annual production total must include quantities manufactured for export and for all domestic uses).

(3) Use of the substance in a consumer product.

On February 2, 1993, EPA received a PMN, designated as P–93–507, for a modified propylene glycol ether. Based on test data on the PMN substance, submitted with the PMN and during the review period, EPA has concerns for the substance's potential to cause adverse systemic, maternal, and fetal effects. The greatest potential for risk appears to be associated with the dermal route of exposure. The extent to which the Agency expects that adverse effects may occur relates in large part to the isomer mix of the PMN substance, which is a combination of three individual isomers.

If the ratio of these isomers in the PMN substance is maintained at certain levels, the Agency considers the potential risk to workers during manufacturing, processing, and use to be reasonable; however, if the formulation contains a high percentage of an isomer for which the suspected human health hazard is significant, the Agency might consider the risk to workers to be unreasonable. Although the Agency does not consider the higher risk formulations likely to be made, and is reasonably confident that the isomer of greatest potential concern will be present at low levels (<5 percent) in the formulation, the PMN submitter was not able to specify with certainty the percentage at which each isomer would be present in the PMN substance. Consequently, there is potential for the PMN substance to be formulated in isomer ratios that may present an unreasonable risk to human health as described above.

In deciding not to regulate the PMN submitter through an administrative consent order, the Agency balanced the potential risks from certain isomer formulations with the benefits to worker safety offered by the PMN substance as a substitute for more potentially hazardous glycol ethers. Another factor in the Agency's decision not to regulate the PMN substance through an order was the product stewardship program that the submitter had established for the substance, which included up-front glove testing to ensure that accurate information on dermal protection would be communicated to workers exposed to the substance.

The results of the glove testing indicated that permeation at rates that might present an unreasonable risk could occur with certain glove models. The Agency considers it prudent and necessary, therefore, that any glove or dermal protective clothing intended for use in handling the PMN substance be tested, or the specifications from the manufacturer or supplier evaluated, prior to use. This testing or evaluation

must ensure that the protective item will be impervious to the PMN substance for the expected duration and conditions of exposure, which includes the likely combinations of other chemicals to which the item may be exposed in the work area. (Each piece of personal protective equipment must be selected and used in accordance with 29 CFR 1910.132 and 1910.133.) Handling the PMN substance without the use of equipment that provides an impervious barrier to it would be considered a significant new use requiring Agency notice and appropriate justification.

Based in part on the submitter's commitment to incorporate the results of the glove study in its product literature, the Agency considered regulation of the submitter to require use of dermal protective equipment under a consent order unnecessary, especially in view of the substance's relative human health advantages. The balance in favor of non-regulation might shift, however, if aspects of the manufacture and use of the PMN substance were to change from those on which the Agency's risk assessment was originally based.

The production volume estimated by the submitter in its PMN, for example, is expected to result in relatively few workers being exposed to the PMN substance. If the production level were to increase substantially, however, the number of workers and the duration of exposure—especially during manufacture—would increase proportionately. As a consequence, EPA would need to revisit its original risk assessment, consider whether a potential unreasonable risk might result at the higher production levels and whether to regulate to mitigate that risk.

Of course, if this increase in production volume were coupled with formulation of the PMN substance with a proportionally greater amount of the isomers of concern, the potential risk to workers would increase as well. The filing of a SNUN based on production volume would afford the Agency an opportunity to evaluate not only the increased worker exposures and risks, but also the risks associated with a particular isomer formulation of the PMN substance, the knowledge of which would be based on actual production experience.

For purposes of determining the annual PMN production volume and compliance with the volume limitation, quantities of the PMN substance manufactured for both domestic use and export should be totaled (i.e. considered in aggregate), even if the export volumes were formerly manufactured "for export only." Once domestic manufacture is intended or commences, all volumes produced—both for domestic consumption and export—are subject to PMN reporting requirements and TSCA section 5 regulation. Also, the annual production total should reflect manufacture or import volumes for any and all uses; the total should not be calculated on a per-use-basis. (See 40 CFR 720.45 and associated Agency guidance documents and instructions.)

In addition, while the potential risk to workers from exposure to the PMN substance might be considered reasonable, similar exposures and risks to the general population by way of consumer uses for the PMN substance might not. The Agency considers potential risks to workers to be mitigated in part by the greater level of protective measures normally found in the workplace and the generally greater awareness among workers of the potential hazards associated with the substances they handle. Consumers, on the other hand, usually are not as aware of potential hazards, do not have access to the same types of information and protections available to workers, and therefore are potentially at greater risk if exposed to a hazardous new substance in a consumer product. Thus, in an effort to prevent an unreasonable risk to the general population, the PMN substance cannot be manufactured or processed for a consumer use until that use and the potential exposures and risks associated with it have been reviewed and evaluated by the Agency.

In summary, for the reasons described above, the Agency has designated handling the PMN substance without adequate dermal protection, production volume when it reaches a substantial level per year, and any consumer use of the PMN substance as significant new uses.

## IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated under this SNUR after the date of this proposed rule will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50621).

## VI. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

## VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50621). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record

with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located in Rm. NE–B607, 401 M St., SW., Washington, DC.

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUNs for this substance. Therefore, EPA believes that the number of small businesses affected by the proposed rule would not be substantial, even if all of the SNUN submitters were small firms.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: August 12, 1994.

**Joseph A. Carra,**

*Acting Director, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

## PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.3550 to subpart E to read as follows:

### § 721.3550 Dipropylene glycol dimethyl ether.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as dipropylene glycol dimethyl ether (PMN P–93–507) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in 40 CFR 721.63(a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in 40 CFR 721.80(o) and annual manufacture and importation volume for any use greater than 4 times the yearly volume specified in the PMN for the substance.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

[FR Doc. 94–20557 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–7106]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation

Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 112612, Federalism**

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

**Executive Order 12778, Civil Justice Reform**

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

**List of Subjects in 44 CFR Part 67**

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

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

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| California | Anderson (City) Shasta County. | Tormey Drain | Approximately 370 feet upstream of Davey Way. | *403 | *401 |
| | | | Approximately 200 feet downstream of Rupert Road. | *409 | *408 |
| | | | Approximately 450 feet upstream of Stingy Lane. | *410 | *411 |
| | | | Approximately 700 feet northeast of the intersection of Balls Ferry Road and Stingy Lane. | None | #1 |
| | | | Approximately 1,400 feet southeast of the intersection of Julie Lane and Travelled Way. | None | #1 |
| | | | Approximately 2,200 feet southeast of the intersection of Julie Lane and Travelled Way. | None | #3 |
| | | | At the intersection of Sharon Avenue and North Street. | *413 | #1 |
| | | | Approximately 900 feet north of the intersection of East and Mill Streets. | *415 | #1 |
| Maps are available for inspection at City Hall, City of Anderson, 1887 Howard Street, Anderson, California. Send comments to The Honorable William Murphy, City Manager, City of Anderson, 1887 Howard Street, Anderson, California 96007. | | | | | |
| | Shasta County (Unincorporated Areas). | Tormey Drain | Just upstream of Dodson Lane | *405 | *405 |
| | | | Approximately 1,300 feet upstream of Dodson Lane. | *407 | *405 |
| | | | Approximately 1,600 feet northwest of the intersection of Brenda and Shelly Lanes. | None | #1 |
| | | | Approximately 3,000 feet northwest of the intersection of Balls Ferry Road and Shelly Lane. | None | #1 |
| | | | Approximately 2,600 feet northwest of the intersection of Brenda and Shelly Lane. | None | #3 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps are available for inspection at the Department of Public Works, 7855 Placer Street, Redding, California. Send comments to The Honorable John McCamman, Chief Administrative Officer, 1500 Court Street, Redding, California 96001. | | | | | |
| | Twentynine Palms (City). San Bernardino County. | Twentynine Palms Channel. | Just upstream of Bullion Mountain Road . | None | *1,727 |
| | | | Approximately 8,900 feet downstream of Amboy Road at an unnamed road. | None | *1,747 |
| | | | Approximately 6,100 feet downstream of Amboy Road at Bagdad Highway. | None | *1,764 |
| | | | Approximately 2,100 feet downstream of Amboy Road. | None | *1,786 |
| | | | Just upstream of Amboy Road | *1,806 | *1,806 |
| | | Basin 1 | Approximately 2,000 feet south of the intersection of Lupine Avenue and Twentynine Palms Highway. | None | #1 |
| | | Smoke Tree Wash | At the intersection of Mission Avenue and National Old Trails Highway. | None | #1 |
| | | Basin 3 | At the intersection of Mesquite Springs and Sullivan Roads. | None | #1 |
| | | | At the intersection of Old Dale and Adobe Roads. | None | #1 |
| | | Joshua Mountain Wash | At the intersection of Serrano Drive and Adobe Road. | None | #1 |
| | | Basins 6 and 7 | Approximately 2,000 feet east of the intersection of Base Line and Adobe Roads. | None | *#1 |
| | | Basins 8, 9, 10, and 11 | At the intersection of Araby Avenue and Morning Drive. | None | #1 |
| | | Basins 8, 9, 10, 11, and 12. | At the intersection of Sherman Hoyt Avenue and Old Dale Road. | None | #1 |
| | | | At the intersection of Twilight Drive and Bedouin Avenue. | None | #2 |
| | | | Approximately 4,000 feet southeast of the intersecton of Morning Drive and Sahara Avenue measured along Gold Park Road. | None | #3 |
| | | Basin 12 | Approximately 8,500 feet southeast of the intersection of Morning Drive and Sahara Avenue measured along Gold Park Road. | None | #4 |
| Maps are available for inspection at City Hall, City of Twentynine Palms, 6136 Adobe Road, Twentynine Palms, California. Send comments to The Honorable Elizabeth H. Meyer, Mayor, City of Twentynine Palms, 6136 Adobe Road, Twentynine Palms, California 92277. | | | | | |
| Colorado | La Plata County (Unincorporated Areas). | Animas River | Approximately 78.94 miles above the mouth. | 6,593 | 6,593 |
| | | | Approximately 79.66 miles above the mouth. | 6,610 | 6,605 |
| | | | Approximately 80.17 miles above the mouth. | 6,623 | 6,622 |
| | | | Approximately 81.24 miles above the mouth. | 6,660 | 6,661 |
| | | | Approximately 81.52 miles above the mouth. | 6,669 | 6,669 |
| Maps are available for inspection at 1060 East Second Avenue, Durango, Colorado. Send comments to The Honorable Fred Klatt, Chairman, La Plata County Board of Commissioners, 1060 East Second Avenue, Durango, Colorado. | | | | | |
| Missouri | Independence (City). Clay and Jackson Counties. | Bundschu Creek | At the confluence with Little Blue River | *739 | *739 |
| | | | Approximately 200 feet downstream of Bly Road. | *747 | *746 |
| | | | Approximately 100 feet upstream of Mississippi Pacific Railroad. | *750 | *750 |
| | | | At Powell Road | *770 | *777 |
| | | Spring Branch | At the confluence with Little Blue River | *750 | *750 |
| | | | Just upstream of Missouri Highway 78 | *764 | *762 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 100 feet upstream of Swope Drive. | *792 | *797 |
| | | | Just downstream of Peck Road | *813 | *827 |
| | | | Approximately 100 feet downstream of Truman Road. | *869 | *860 |
| | | | Approximately 50 feet upstream of Kieger Road. | *884 | *882 |
| | | South Fork Spring Branch | Approximately 840 feet upstream of the confluence with Spring Branch. | *821 | *828 |
| | | | Approximately 80 feet upstream of Lee's Summit Road. | *865 | *867 |
| | | Crackerneck Creek | Approximately 2,000 feet downstream of Selsa Road. | *755 | *755 |
| | | | Just upstream of Selsa Road | *763 | *761 |
| | | | Approximately 250 feet upstream of State Highway 291. | *786 | *794 |
| | | | Just upstream of Crackerneck Road | *825 | *825 |
| | | | Just upstream of South Leslie Drive | *920 | *920 |
| | | | Approximately 60 feet upstream of Partridge Drive. | *956 | *960 |
| | | North Fork Crackerneck Creek. | Just upstream of Selsa Road | *760 | *758 |
| | | | Approximately 100 feet upstream of Bryn Mawr Drive. | *766 | *772 |
| | | | Approximately 2,400 feet upstream of Viking Drive | *872 | *859 |
| | | Adair Creek | At the confluence with Little Blue River | *763 | *763 |
| | | | At Old Highway 71 | *778 | *775 |
| | | | Approximately 100 feet upstream of Lee's Summit Road. | *810 | *813 |
| | | | Just upstream of Mills Road | *830 | *834 |
| | | | At the entrance to the culvert at Nolan Road. | *911 | *910 |
| | | Adair Creek Tributary No. 1. | Approximately 300 feet upstream of 44th Terrace Extended. | None | *814 |
| | | | Approximately 110 feet upstream of Interstate Highway 70. | None | *853 |
| | | Adair Creek Tributary No. 2. | At the confluence with Adair Creek | *859 | *857 |
| | | | Just downstream of 44th Street | None | *859 |
| | | | Approximately 100 feet upstream of 42nd Street. | None | *895 |
| | | | At the entrance to the culvert located just upstream of Interstate Highway 70. | None | *921 |
| | | Rock Creek | Approximately 50 feet downstream of Kentucky Road. | None | *747 |
| | | | Just upstream of Illinois Central Gulf Railroad. | *756 | *757 |
| | | | Approximately 40 feet upstream of Winner Road. | *756 | *762 |
| | | | Approximately 40 feet upstream of Arlington Avenue. | *800 | *812 |
| | | | Just upstream of Sterling Avenue | *857 | *857 |
| | | | Just downstream of 32nd Street | *900 | *907 |
| | | Sugar Creek | Just upstream of Independence Avenue | *819 | *817 |
| | | | Approximately 50 feet upstream of Claremont Avenue. | *869 | *869 |
| | | | Just upstream of Park Avenue | *916 | *914 |
| | | Mill Creek | At Kentucky Road | *810 | *810 |
| | | | Approximately 50 feet upstream of Liberty Street. | *894 | *894 |
| | | | Approximately 70 feet upstream of West Jones Street. | *920 | *924 |
| | | | Approximately 75 feet upstream of Nickell Avenue. | *942 | *944 |
| | | | Approximately 380 feet upstream of Independence Avenue (U.S. Highway 24). | None | *960 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps are available for inspection at the Department of Public Works and Engineering, City Hall, City of Independence, 111 East Maple Street, Independence, Missouri. Send comments to The Honorable Ron Stewart, Mayor, City of Independence, City Hall, 111 East Maple Street, Independence, Missouri 64050. | | | | | |
| | Jefferson County (Unincorporated Areas). | Joachim Creek | Approximately 2,000 feet upstream of Hematite Road. | *434 | *434 |
| | | | Approximately 400 feet upstream of Missouri Pacific Railroad. | None | *452 |
| | | | Just downstream of State Highway 21 | None | *457 |
| | | | At downstream corporate limits of City of DeSoto. | *472 | *474 |
| | | Cotter Creek | At confluence with Joachim Creek | None | *458 |
| | | | Approximately 500 feet upstream of Victoria Lemay Road. | None | *461 |
| | | | Approximately 100 feet upstream of State Highway 21. | None | *495 |
| | | | Approximately 9,400 feet upstream of Whitehead Road. | None | *588 |
| | | Sandy Creek | Just upstream of Missouri Pacific Railroad. | None | *413 |
| | | | Approximately 200 feet upstream of County Highway Z. | None | *414 |
| | | | Approximately 500 feet upstream of Johnston Road. | None | *434 |
| | | | Approximately 200 feet downstream of Allen Road. | None | *452 |
| | | | Just upstream of State Highway 21 | None | *482 |
| | | | Approximately 1,100 feet upstream of Hayden Road. | None | *569 |
| | | Sandy Creek East Tributary. | Approximately 500 feet downstream of Linhorst Road. | None | *431 |
| | | | Just downstream of Jarvis Road | None | *460 |
| | | | Approximately 2,000 feet upstream of Sandy Church Road. | None | *487 |
| | | Big Creek | At confluence with Sandy Creek | None | *447 |
| | | | Approximately 600 feet upstream of Allen Road. | None | *459 |
| | | | Just upstream of Jarvis Road | None | *507 |
| | | | Approximately 2,100 feet upstream of Jarvis Road. | None | *527 |
| | | Sandy Creek West Tributary. | At confluence with Sandy Creek | None | *513 |
| | | | Approximately 100 feet upstream of Jarvis Road. | None | *552 |
| | | | Approximately 2,800 feet upstream of Jarvis Road. | None | *576 |
| | | Glaize Creek | Just downstream of Moss Hollow Road | *438 | *438 |
| | | | Just upstream of Chasteen Lane | None | *445 |
| | | | Just downstream of Old Lemay Ferry Road. | None | *512 |
| | | | Approximately 1,500 feet upstream of Quarry Road. | None | *570 |
| | | Moss Hollow Creek | Approximately 360 feet downstream of Moss Hollow Road. | None | *438 |
| | | | Just upstream of Kentucky Road | None | *523 |
| | | | Approximately 120 feet upstream of Upper Moss Hollow Road. | None | *544 |
| | | Kneff Road Tributary | Approximately 100 feet downstream of County Highway M. | None | *465 |
| | | | Approximately 100 feet upstream of Kneff Farm Road. | None | *512 |
| | | | Just upstream of Old Lemay Ferry Road | None | *547 |
| | | | Approximately 1,050 feet upstream of Dry Fork Road. | None | *612 |
| | | Old Lemay Ferry Road Tributary. | At confluence with Glaize Creek | None | *511 |
| | | | Just downstream of Wedde Road | None | *565 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Just upstream of Old Lemay Ferry Road (first crossing). | None | *633 |
| | | | Approximately 2,500 feet upstream of Old Lemay Ferry Road (upstreammost crossing). | None | *685 |
| | | Dutch Creek | Approximately 200 feet upstream of Little Dutch Creek Road. | None | *468 |
| | | | Approximately 200 feet upstream of Eime Road. | None | *530 |
| | | | Approximately 4,250 feet upstream of Eime Road. | None | *571 |
| | | Rock Creek | Just upstream of Old Lemay Ferry Road . | None | *484 |
| | | | Just upstream of Lions Den Road | None | *496 |
| | | | Just upstream of Old State Highway 21 | None | *577 |
| | | | Just upstream of Rustic Trails Drive | None | *652 |
| | | | Approximately 3,300 feet upstream of Rustic Trails Drive. | None | *686 |

Maps are available for inspection at the Highway Department, 725 Maple Street, Court House, Annex Building, Hillsboro, Missouri.

Send comments to The Honorable Elizabeth Faulkenberry, Chairperson, Jefferson County Board of Commissioners, P.O. Box 100, Hillsboro, Missouri 63050.

| | | | | | |
|---|---|---|---|---|---|
| Oklahoma | Bethany (City) Oklahoma County. | Unnamed Tributary to North Canadian River. | Approximately 500 feet upstream of the confluence with the North Canadian River, at the City of Bethany Corporate Limits. | None | *1,249 |
| | | | Approximately 1,450 feet upstream of the confluence with the North Canadian River. | None | *1,250 |

Maps are available for inspection at City Hall, City of Bethany, 6700 Northwest 36th Street, Bethany, Oklahoma.

Send comments to The Honorable Richard G. Gertson, City Manager, City of Bethany, 6700 Northwest 36th Street, Bethany, Oklahoma 73008.

| | | | | | |
|---|---|---|---|---|---|
| | Tulsa County (Unincorporated Areas). | Little Sand Creek | Approximately 2,000 feet above the confluence with the Arkansas River. | None | *668 |
| | | | At 11th Street | *680 | *676 |
| | | | Approximately 225 feet upstream of U.S. Highway 64. | *705 | *706 |
| | | | Approximately 4,325 feet upstream of U.S. Highway 64. | *740 | *740 |
| | | | Approximately 5,575 feet upstream of U.S. Highway 64. | *719 | *749 |
| | | Sand Creek | Approximately 1,600 feet upstream of the confluence with the Arkansas River. | None | *664 |
| | | | Approximately 600 feet upstream of U.S. Highway 64. | *693 | *695 |
| | | | Approximately 3,700 feet upstream of U.S. Highway 64. | *716 | *716 |
| | | | Approximately 4,800 feet upstream of U.S. Highway 64. | *725 | *727 |

Maps are available for inspection at 500 South Denver, Room 312, Tulsa, Oklahoma.

Send comments to The Honorable Lewis Harris, Chairman, Board of County Commissioners, Tulsa County, 500 South Denver, Tulsa, Oklahoma 74104.

| | | | | | |
|---|---|---|---|---|---|
| Texas | Glen Rose (City) and Somervell County (Unincorporated Areas). | Paluxy River | Approximately 2,450 feet downstream of Elm Street. | None | *620 |
| | | | At Elm Street | None | *624 |
| | | | Just upstream of U.S. Highway 67 | None | *644 |

Mapa are available for inspection at Town Hall, 201 Vernon Street, Glen Rose, Texas.

Send comments to The Honorable George Freas, Mayor, City of Glen Rose, P.O. Box 1362, Glen Rose, Texas 76043.

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

Dated: August 12, 1994.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 94–20524 Filed 8–19–94; 8:45 am]

BILLING CODE 6718–03–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 20

RIN 1018–AC66

## Migratory Bird Hunting; Conditional Approval of Bismuth-Tin Shot as Nontoxic for the 1994–95 Seasons

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This is to inform the public that the U.S. Fish and Wildlife Service (Service) is proposing in this notice to conditionally approve bismuth-tin shot as nontoxic for waterfowl and coot hunting during the 1994–95 waterfowl hunting season. Available information and data from studies indicate that bismuth-tin shot is nontoxic to migratory waterfowl if ingested. Further studies will be required to confirm these preliminary conclusions.

**DATES:** Comments on this proposal must be received by September 21, 1994.

**ADDRESSES:** Comments regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW, Washington, D.C. 20240. Comments received on this Notice will be available for public inspection during normal business hours in Room 634 Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul R. Schmidt, Chief, or Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW, Washington, D.C. 20240 (703/358–1714).

**SUPPLEMENTARY INFORMATION:** The Service is proposing on an interim basis to conditionally approve the use of bismuth-tin shot (in a mixture of [nominally] 97–3 percents, respectively) as nontoxic for the taking of waterfowl and coots during the 1994–95 hunting season. This proposed action responds to a petition for rulemaking by the Bismuth Cartridge Company, dated June 14, 1994, and received by the Service on June 24, 1994. Specifically, the petition requests that the Service modify the provisions of 50 CFR, section 20.21(j), to make legal the use of bismuth-tin shot on an interim, conditional basis for the 1994–95 and the 1995–96 seasons. The Bismuth Cartridge Company petition acknowledges responsibility for completion of the nontoxic shot approval procedures studies outlined in 50 CFR, 20.134, before final approval is considered.

The petition for rulemaking cites as reasons in support of the proposal the following: a) bismuth is nontoxic; b) the proposed rule is conditional; and c) the evidence presented in the record, i.e., the application from the Bismuth Cartridge Company.

The petition for rulemaking follows two applications for final approval, one dated October 21, 1993, and the other dated December 30, 1993, that were provided to the Service. In reply, the Service responded that the applications were deficient because the bismuth-based shot material expected to be loaded into shotshells had not been found through preliminary testing to be nontoxic. Preliminary toxicity testing by the applicants had been with (essentially) pure bismuth only. Thus, there was not (either available or provided with the application) adequate scientific data covering toxicity of the material to be loaded into shotshells. However, the Service pledged in both replies to work with the applicants to process the applications in as timely a fashion as possible.

Since the mid-1970s, the Service has sought to identify shot that when spent does not pose a significant hazard to migratory birds and other wildlife. Ingestion of spent lead shot has long been identified as a source of significant mortality in migratory birds. The Service first addressed the issue of lead poisoning in waterfowl in a 1976 environmental impact statement (EIS), and later readdressed the issue in a 1986 supplemental EIS. The latter provided the scientific justification for the ban on the use of lead shot for hunting waterfowl and coots that was begun in 1986 and completed in 1991. Currently, only steel shot has been approved by the Service Director as nontoxic. However, the Service believes that there may be other suitable candidate shot materials available which could be approved for use as nontoxic shot. The Service is anxious to consider these other potential candidates for approval as nontoxic, and does not feel constrained to limit nontoxic shot options.

The regulation relative to use of nontoxic shot and the concomitant endorsement by the Service of steel shot has generated some controversy. Some hunters still believe that steel shot is less ballistically efficient than lead and can damage shotgun barrels, although the Service believes that the majority of hunters have accepted steel as an effective alternative to lead. However, resistance to the use of steel shot is undoubtedly creating an unknown level of noncompliance with the requirement to use nontoxic shot for waterfowl and coot hunting. The availability of an alternative to steel shot will provide the public greater choice during an interim period and, thus, could improve hunter compliance with nontoxic shot requirements in waterfowl hunting situations. In addition, increased hunter use of this alternative shot could benefit upland game bird habitats, and upland game birds as well, through the diminished use of lead shot in those areas.

The Service is proposing this conditional, interim approval on the basis of what is known about the toxicity of bismuth and tin, principally the former because it makes up almost all of the of the shot. However, test results with tin include those by Grandy et al. (1968) in which there were no deaths associated with mallards dosed with tin shot. For bismuth, there are three especially recent and relevant studies that support this proposal.

In a 30-day acute toxicity study now being completed with bismuth-tin shot, Sanderson et al. (1994) report no mortality associated with dosage of mallard ducks. Although the dosage phase and preliminary analyses have been completed, concluding tissue examination and analyses remain to be carried out. However, this concluding work will be completed before any final rulemaking; when reviewing the preliminary results, it is doubtful that any dramatically different findings are yet to occur.

Sanderson et al. (1992), over the course of a 30-day acute toxicity study on captive-reared mallards with three different shot-types, i.e., lead, essentially pure bismuth and iron shot, found no mortality associated with bismuth. Further, calculations on the absorption of bismuth based on estimated excreted quantities, with known amounts in blood, liver, bone and muscle (a range of none to minute amounts) suggest that most of the bismuth eroded from the shot as a result of gizzard action was excreted in the feces. Sanderson et al. (1992) state that "All nine ducks (three control, three $Bi_8$ and three $Fe_8$) examined at the end of the study had normal amounts of muscle and abundant fat depots. Internal organs were within normal limits. No significant differences were observed among the three groups of

ducks." (Numbers behind symbols refer to dosage rates, i.e., 8 bismuth and 8 iron shot, which is the maximum number of the range specified by the experimental design.)

Ringelman et al. (1992) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (TBT), which was 39, 44.5 and 16.5 percent by weight, respectively. No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and undosed birds were judged to be unrelated to shot exposure. Although bismuth concentrations in kidney and liver were near detectable limits, they did not differ between dosed and undosed birds. This study concluded that "...TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study."

Sanderson et al. (1992) have reviewed the relevant, and mostly earlier, literature with regard to the toxicity of bismuth. This literature provides little in the way of comparison to the results of the types of toxicity studies required by the Service and cited here. However, this literature provides findings which tend not to create a concern for any potential metallic bismuth-related intoxication in waterfowl when ingested. Although there have been some human neurological problems reported that are related to chronic use of organic bismuth compounds, bismuth (especially metallic) is not considered a serious industrial hazard to humans. A common use of bismuth is in pharmaceuticals for stomach ailments; bismuth is the principal active ingredient in Pepto-Bismol®.

The studies cited here for support of the application represent only the first of a series of three toxicity tests required by 50 CFR 20.134, before a final approval can be given to the applicant by the Director of the Service. The other two toxicity tests required are for: (1) long-term chronic exposure; and (2) reproduction. The Service believes it has sufficient flexibility in the regulations to approach final approval in a step manner. That is, acute toxicity tests and other toxicity information suggest that a 1-year conditional approval can be provided without significant risk to migratory bird resources. If indicated, second and third 1-year approvals can be provided until the series of toxicity tests are completed; at which time, final approval may be made. This series of tests would have to be completed before the Service would consider final approval of bismuth-tin shot as nontoxic.

Bismuth-tin shot is currently approved by the Canadian Wildlife Service for use in nontoxic shot zones on a conditional basis under terms similar to those described above. Bismuth-tin shot is also used in several European countries, and elsewhere in the world.

**References:**

Grandy, J.W., L.N. Locke and G.E. Bagley. 1968. Relative toxicity of lead and five proposed substitute shot types to pen-reared mallards. J. Wildl. Manage. 32(3):483–488

Ringelman, J.K., M.W. Miller and W.F. Andelt. 1992. Effects of ingested tungsten-bismuth-tin shot on mallards. CO Div. Wildl., Fort Collins, 24 pp

Sanderson, G.C. and W.L. Anderson. 1994. Toxicity and reproductive effects of ingested bismuth alloy shot and effects of embedded bismuth alloy, lead, and iron shot on game-farm mallards. 3rd Prog. Rpt., Ill. Nat. Hist. Surv., Champaign, IL. 14 pp. + tables

Sanderson, G.C., S.G. Wood, G.L. Foley and J.D. Brawn. 1992. Toxicity of bismuth shot compared with lead and steel shot in game-farm mallards. Trans. 57th. N. A. Wildl. Nat. Res. Conf., 57:526–540.

In summary, this rule proposes to conditionally approve the use of bismuth-tin shot for waterfowl and coot hunting for the 1994–95 season. The applicants, who wish to obtain final approval for their shot as nontoxic, would be required to obtain season-by-season approval until they have successfully completed all of the tests in the testing procedures required by 50 CFR, section 20.134.

**NEPA Consideration**

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–1508), the Service will comply with NEPA prior to implementation of the final rule.

**Endangered Species Act Considerations**

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat . . ." Consequently, the Service will initiate Section 7 consultation under the Endangered Species Act for this proposed rulemaking to legalize, on an interim and conditional basis, the use of bismuth-tin shot for hunting waterfowl and coots during the 1994- 95 seasons. When completed, the results of the Service's consultation under Section 7 of the Endangered Species Act may be inspected by the public in, and will be available to the public from, the Division of Endangered Species and Habitat Conservation or the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

**Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act.**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions. However, the Service has determined that this rule will have no effect on small entities since the shot to be approved will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule does not contain any information collection efforts requiring approval by the OMB under 44 U.S.C. 3504.

**Authorship**

The primary author of this final rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 20—[AMENDED]**

1. The authority citation for Part 20 would continue to read as follows:

**Authority:** Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.)

2. Section 20.21 is proposed to be amended by revising paragraph (j) introducting text and paragraph (j)(2) to read as follows (The introductory paragraph would be republished for reader convenience):

**§ 20.21 Hunting methods.**

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No persons shall take migratory game birds:

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin (97–3 percents, respectively) shot or such shot approved as nontoxic by the Director pursuant to procedurs set forth in § 20.134, Provided, that:

* * * * *

(2) Bismuth-tin shot is legal as nontoxic shot only during the 1994–95 seasons.

Date: August 2, 1994.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 94–20621 Filed 8–19–94; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register
Vol. 59, No. 161
Monday, August 22, 1994

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

### Animal and Plant Health Inspection Service

[Docket No. 94–081–1]

### Procedures for Importing Animals Through the Harry S. Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice of the date and location of the lottery for authorization of the use of the Harry S Truman Animal Import Center (HSTAIC) in calendar year 1995. We are also giving notice of the period during which applications must reach the Animal and Plant Health Inspection Service in order to be included in the lottery.

DATES: To be included in the lottery for authorization to use HSTAIC in calendar year 1995, applications must be received no earlier than October 1, 1994, and no later than October 15, 1994. Deposits must be received by November 29, 1994. The lottery for authorization to use HSTAIC during 1995 will be held on December 6, 1994.

ADDRESSES: Completed applications and deposits must be sent to the Administrator, c/o Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, P.O. Box 1898, Hyattsville, MD 20788. Application forms may be obtained by writing to the same address, or by calling the telephone number provided under the heading "FOR FURTHER INFORMATION CONTACT." The lottery will be held at the Agriculture Research Service, Building 007, conference room 6 west, 10300 Baltimore Boulevard, Beltsville, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Montgomery, Staff Specialist, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 765B, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8172.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92, §§ 92.430, 92.431, 92.522, and 92.523 (referred to below as the regulations), set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, FL.

Because the demand for quarantine space at HSTAIC has traditionally exceeded the space available, the regulations provide that a lottery will be held each year during the first 7 days of December, to determine the priority of applications for the following calendar year. To be included in the December lottery, applications must reach the Import-Export Animals Staff of the Animal and Plant Health Inspection Service (APHIS) no earlier than October 1, and no later than October 15 of the year of the lottery. Additionally, applicants must send a deposit in the form of a certified check or money order in the amount of $32,000, payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, for each application. APHIS will not consider an application unless we receive this deposit from the applicant on or before November 29, 1994. In the event that the Import-Export Animals Staff receives no more than one application between October 1, 1994, and October 15, 1994, the lottery will not be held, and APHIS will grant exclusive right to use HSTAIC during calendar year 1995 in the order applications are received.

Applicants should be aware that certain improvements are being made to the HSTAIC facility in order to meet standards set by the Florida Department of Environmental Protection. The availability of HSTAIC for use for 1995 lottery applicants will be dependent upon satisfactory completion of these projects.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, D.C., this 16th day of August 1994.

Terry L. Medley,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 94–20529 Filed 8–19–94; 8:45 am]

BILLING CODE 3410–34–P

## Forest Service

### Elk Wild and Scenic River Management Plan, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On August 30, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the Elk Wild and Scenic River Management Plan on the Siskiyou National Forest was published in the Federal Register (56 FR 42974). A notice of availability for the draft EIS was published in the Federal Register on November 20, 1992 (57 FR 54789), with a comment period on the draft EIS ending February 26, 1993.

The Forest Service has decided to terminate the environmental analysis process. There will be no final EIS for the Elk Wild and Scenic River Management Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Joel King, Land Management Planning, P.O. Box 440, Siskiyou National Forest, Grants Pass, Oregon 97526 or telephone (503) 471–6580.

Dated: August 11, 1994.

Mike Lunn,

*Forest Supervisor.*

[FR Doc. 94–2050F Filed 8–19–94; 8:45 am]

BILLING CODE 3410–11–M

## BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

### Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on Friday, September 9, 1994 at 10:00 a.m. in the Cannon House Office Building, Room 210, Washington, D.C.

The meeting of the Commission shall be open to the public. The proposed

agenda includes discussion of issues relating to the Commission's charter, including but not limited to, options for controlling the spiraling growth on entitlement expenditures. It is expected that various interest groups will present testimony to Commission members regarding various entitlement programs and option for reform.

Records shall be kept of all Commission proceedings and shall be available for public inspection in Room 825 of the Hart Senate Office Building, 120 Constitution Avenue, N.E., Washington, D.C. 20510.

**J. Robert Kerrey,**

*Chairman.*

**John C. Danforth,**

*Vice-Chairman.*

[FR Doc. 94–20500 Filed 8–19–94; 8:45 am]

BILLING CODE 4151–04–M

## COMMISSION ON CIVIL RIGHTS

### Membership of the USCCR Performance Review Board

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of membership of the USCCR Performance Review Board.

**SUMMARY:** This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1994 rating year.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Harbison, Personnel Division, U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Washington, D.C. 20425 (202) 376–8356.

**Members**

- Lorin Goodrich, Director of Administration, International Trade Commission;
- Annie Blackwell, Director, Policy, Planning and Program Development Division, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor; and
- Judy England-Joseph, Director, Housing and Community Development Issues, U.S. General Accounting Office.

Dated: August 16, 1994.

**Emma Gonzalez-Joy,**

*Solicitor.*

[FR Doc. 94–20481 Filed 8–19–94; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 695]**

### Grant of Authority for Subzone Status for Two Plants of Alps Manufacturing (USA), Inc. (Computer/ Telecommunications/Video Equipment and Auto Electronic Parts); Garden Grove and Compton, CA, Los Angeles/ Long Beach Port of Entry Area

"Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Harbor Commissioners of the City of Long Beach, California, grantee of Foreign-Trade Zone 50, for authority to establish special-purpose subzone status at the computer/ telecommunications/video equipment and auto electronic parts manufacturing facilities of Alps Manufacturing (USA), Inc., in Garden Grove and in Compton, California, was filed by the Board on August 16, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 45–93, 58 FR 46627, 9–2–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 50E) at the plant sites of Alps Manufacturing (USA), Inc., in Garden Grove and in Compton, California (Los Angeles/Long Beach port of entry area), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of August 1994.

**Susan G. Esserman,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

[FR Doc. 94–20546 Filed 8–19–94; 8:45 am]

BILLING CODE 3510–DS–P

**[Order No. 696]**

### Grant of Authority for Subzone Status; Reilly Dairy & Food Company (Dairy Products), Tampa, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Tampa, Florida, grantee of Foreign-Trade Zone 79, for authorization of special-purpose subzone status for export activity at the dairy products manufacturing plant of the Reilly Dairy & Food Company in Tampa, Florida, was filed by the Board on August 6, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 38–93, 58 FR 43323, 8–16–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 79A) at the Reilly Dairy & Food Company plant in Tampa, Florida, at the location described in the application, subject to the FTZ Act and the Board's regulations, including

§ 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 11th day of August 1994.

**Susan G. Esserman,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

[FR Doc. 94–20547 Filed 8–19–94; 8:45 am]

BILLING CODE 3510–DS–P

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[Order No. 701]

## Grant of Authority for Subzone Status Florsheim Shoe Company Plants (Leather Footwear), Jefferson City, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the St. Louis County Port Authority, grantee of Foreign-Trade Zone 102, for authorization for special-purpose subzone status at the manufacturing and distribution facilities of Florsheim Shoe Company in Jefferson City, Cape Girardeau, Kirksville and West Plains, Missouri, was filed by the Board on August 13, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 44–93, 58 FR 44652, 8/24/93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 102C) at the plant sites of the Florsheim Shoe Company in Jefferson City, Cape Girardeau, Kirksville and West Plains, Missouri, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of August 1994.

**Susan G. Esserman,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

[FR Doc. 94–20548 Filed 8–19–94; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration, Commerce

## Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 84–6A012.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters ("NFE") on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988), September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); and November 19, 1992 (57 FR 55510, November 25, 1992).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Allan Bros., Inc., Naches, Washington; Baker Produce, Inc., Kennewick, Washington; Bardin Farms Corp., Monitor Washington; Beebe Orchard Company, Chelan, Washington; Blue Chelan, Inc., Chelan, Washington; Blue Star Growers, Inc., Cashmere, Washington; Borton & Sons, Yakima, Washington; Brewster Heights Packing, Brewster, Washington; Broetje Orchards, Prescott, Washington; Earl E. Brown & Sons, Inc., Milton-Freewater, Oregon; Carlson Orchards, Yakima, Washington; Chief Tonasket Growers, Tonasket, Washington; Clasen Fruit & Cold Storage Co., Yakima, Washington; Columbia Marketing International Corp., Wenatchee, Washington; Congdon Orchards, Inc., Yakima, Washington; Cowiche Growers, Inc., Cowiche, Washington; Cowin & Sons, Wapato, Washington; Crisp'n Spicy Growers, Inc., Pateros, Washington; Cubberley Packing Co., Inc., Tieton, Washington; Double Diamond Fruit, Quincy, Washington; Douglas Fruit Co., Pasco, Washington; Dovex Export Co., Wenatchee, Washington (controlling entity: Dovex Corporation); Dovex Fruit Company, Wenatchee, Washington (controlling entity: Dovex Corporation); Duckwall-Pooley Fruit Co., Odell, Oregon; E.W. Brandt & Sons Inc., Parker, Washington; Eakin Fruit Co., Union Gap, Washington; Evans Fruit Co., Inc., Yakima, Washington; Gilbert Orchards, Inc., Yakima, Washington; Gold Digger Apples, Inc., Oroville, Washington; Gwin, White & Prince Inc., Wenatchee, Washington; H & H Orchards Packing, Inc., Malaga, Washington; Haas Fruit Co., Inc., Yakima, Washington (controlling entity: John I. Haas, Inc.); Highland Fruit Growers, Inc., Yakima, Washington; Holt and Robison Fruit Co., Inc., Omak, Washington; Jack Frost Fruit Co., Yakima, Washington; Johnny Appleseed of WA/CRO Fruit Co., Wenatchee, Washington; Jones Fruit & Produce, Inc., Cashmere, Washington; Jones Orchards, Yakima, Washington (controlling entity: Warren Jones Co.); Kershaw Fruit & Cold Storage, Yakima, Washington; Larson Fruit Co., Selah, Washington; Lloyd Garretson Co., Inc., Yakima, Washington; M & J Fruit Sales, Yakima, Washington; Magi, Inc., Brewster, Washington; Majestic Valley Produce, Wenatchee, Washington; Manson Growers Cooperative, Manson, Washington; Matson Fruit Company, Selah, Washington; McDougall & Sons,

Inc., Wenatchee, Washington; Naumes, Inc., Medford, Oregon; Nickell Orchards, Pateros, Washington; Northwestern Fruit & Produce Co., Yakima, Washington; Nuchief Sales Inc., Wenatchee, Washington; Orchard View Farms, The Dalles, Oregon; Oro Fruit Company, Oroville, Washington; Pacific Fruit Growers & Packers, Inc., Yakima, Washington; Perham Fruit Corp., Wapato, Washington; Peshastin Fruit Growers Assn., Peshastin, Washington; Peshastin Hi-Up Growers, Peshastin, Washington; Phillippi Fruit Co., Inc., Wenatchee, Washington; Pine Canyon Fruit Co., Inc., Orondo, Washington; Poirier Packing & Warehouse, Pateros, Washington; Price Cold Storage, Yakima, Washington; R.E. Redman & Sons, Inc., Wapato, Washington; Rainier Fruit Sales, Selah, Washington; Regal Fruit Cooperative, Tonasket, Washington; Roche Fruit Company, Inc., Yakima, Washington; Rowe Farms, Naches, Washington; Strand Apples, Inc., Cowiche, Washington; Sun King Fruit, Sunnyside, Washington; Sund-Roy, Inc., Yakima, Washington; Taplett Fruit Packing Inc., Wenatchee, Washington; Trout, Inc., Chelan, Washington; Valicoff Fruit Company, Inc., Wapato, Washington; Valley Fruit, Wapato, Washington; Wapato Fruit, Wapato, Washington; Wells & Wade Fruit Co., Wenatchee, Washington (controlling entity: Dole Food Co., Inc.); Witte Orchards, E. Wenatchee, Washington; and Zirkle Fruit Co., Selah, Washington;

2. Delete the following company as a "Member" of the Certificate: Columbia Reach Pack, Yakima, Washington;

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Auvil Fruit Company (Auvil Fruit Co., Inc.); Cascadian Fruit Shippers, Cascadian Fruit Shippers, Inc.); Columbia Fruit Packers (Columbia Fruit Packers, Inc.); Hansen Fruit & Cold Storage (Hansen Fruit & Cold Storage Co.); C.M. Holtzinger Company (C.M. Holtzinger Fruit Co., Inc.); Stemilt Growers (Stemilt Growers, Inc.); and Washington Fruit & Produce (Washington Fruit & Produce Co.);

4. Change the definition of "Products" to include "fresh apples" making the Certificate applicable to the export of fresh sweet cherries and fresh apples by NFE and its Members, on behalf of the Members;

5. Revise the "Export Trade Activities and Methods of Operation" in NFE's Export Trade Certificate of Review. The revised "Export Trade Activities and Methods of Operation" reads as follows:

1. With respect to fresh sweet cherries and fresh apples:

a. NFE may on behalf and with the advice of its Members advise and cooperate with the United States Government in (i) establishing procedures regulating the export of the Products, and (ii) fulfilling the phytosanitary and/or funding requirements imposed by foreign governments for export of the Products.

b. NFE may on behalf and with the advice of its Members participate in negotiations and enter into agreements with foreign buyers (including governments and private persons) regarding:

(i) fumigating, packing and other quality control and/or phytosanitary procedures to be followed in the export of the Products. Such procedures may include activities related to insect and disease detection, certification, inspection, storage and treatment protocols required to qualify goods for export shipment and to meet the import requirements of the foreign government;

(ii) the quantities, time periods, prices and terms and conditions, in connection with actual or potential bona fide export opportunities, upon which NFE's Members will export the Products.

c. NFE may on behalf and with the advice of its Members establish and operate fumigation facilities for use in the export of the Products.

d. NFE may on behalf and with the advice of its Members establish and administer phytosanitary protocols for the purpose of qualifying the Products for Export Markets.

e. NFE may on behalf and with the advice of its Members provide market entry and development assistance, including related administrative and promotional services, to its Members.

f. NFE may on behalf and with the advice of its Members negotiate and enter into agreements with providers of transportation services for export of the Products.

g. NFE may recover administrative expenses and costs related to qualifying and preparing Members' Products for export through fees and assessments allocated to each Member on a pro-rata share basis or any other non discriminatory method. If a Member objects to the method of allocating expenses and costs, the Member shall be entitled to be charged on the basis of actual expenses incurred.

h. NFE may on behalf and with the advice of its Members develop internal operational procedures and disseminate information to Members to assist the membership in meeting the criteria established by foreign governments for exportation of the Products.

i. NFE may on behalf and with the advice of its Members engage in such activities as are necessary to ensure that the activities of growers and packers during the various stages of growing, harvesting, grading, packing, packaging, labeling, storage, and treatment meet the requirements established by a relevant foreign government so that the Members' goods will qualify for importation into the country subject to such requirements.

j. NFE may on behalf and with the advice of its Members allocate the capacity of facilities, time of domestic and foreign inspection personnel, and other resources of NFE amongst the Members engaged in the shipment of Products for export, provided that such allocations are based on shipment quantities or other non-discriminatory criteria.

k. NFE may on behalf and with the advice of its Members conduct quality control studies and inspections of goods for export at point of shipment, point of arrival, and through the retail level.

2. With respect to fresh sweet cherries only, NFE may on behalf and with the advice of its Members establish export prices and quotas and allocate export quotas among growing regions and its Members. In allocating export quotas among growing regions and its Members, NFE, through employees or agents of NFE who are not also employees of a Member, may receive, and each Member may supply to such employees or agents of NFE, information as to such Member's actual total export shipments of fresh sweet cherries in any previous growing season or seasons, provided that such information is not disclosed by NFE to any other Member.

3. With respect to fresh apples only:

a. NFE may on behalf and with the advice of its Members establish export prices and quotas and allocate export quotas among growing regions and its Members, in connection with actual or potential bona fide export opportunities, provided that each Member shall remain free to deviate from established prices by whatever amount it sees fit.

b. In allocating export quotas among growing regions and its Members, NFE, through employees or agents of NFE who are not also employees of a Member, may receive, and each Member may supply, information as to such Member's actual total export shipments of fresh apples in any previous growing season or seasons, provided that such information is not disclosed by NFE to any other Member, except in a coded form to members of the Board of Directors for use only at meetings and

in connection with other official activities of the Board.

c. NFE, through employees or agents of NFE who are not also employees of a Member, may receive, and each Member shall supply, the quantity it will offer for export, without the Member or NFE intentionally disclosing, directly or indirectly, the quantity to any other Member, except in a coded form to members of the Board of Directors for use only at meetings and in connection with other official activities of the Board.

6. Revise "Terms and Conditions of Certificate" to read as follows:

(a) Except as provided in the second sentence of paragraph 2 and in paragraphs 3(b) and 3(c) of the Export Trade Activities and Methods of Operation, a Member of NFE shall not intentionally disclose, directly or indirectly, to NFE or to any other Member any information about its own costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies or methods that is not already generally available to the trade or public.

(b) Export prices for the Products established by NFE shall not be expressed by NFE to individual Members in a form that sets out separately the values of components of such prices, except that export-specific components of export prices such as fees, commissions and charges payable to NFE, foreign sales agents, and transportation companies may be set out separately.

(c) Meetings at which the Board of Directors of NFE establishes quotas, the allocation of quotas among Members, and export prices shall not be open to the public or to Members of NFE not represented on the Board of Directors.

(d) NFE and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, or Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

(e) Participation by a Member in any Export Trade Activity or Method of Operation under the Certificate shall be entirely voluntary as to that Member, subject to the honoring of all phytosanitary and/or funding requirements by foreign governments for specific export transactions. A member may withdraw from coverage under the Certificate at any time by giving written notice to NFE. NFE will give notice of any such withdrawal by a Member to the Secretary of Commerce and the Attorney General in the next annual report by NFE.

(f) With respect to fresh apples only:

a. Each Member shall determine independently of other Members the quantity of fresh apples it will offer to export or sell through NFE;

b. NFE may not solicit from any Member specific quantities for export or require any Member to export any minimum quantity of fresh apples.

7. Revise "Definitions" to read as follows:

"Member" within the meaning of § 325.2(*l*) of the Regulations means the member companies of NFE set out in Attachment A and incorporated by reference.

"Coded form" means a form that does not disclose the identity of a Member.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 16, 1994.

**W. Dawn Busby,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 94–20545 Filed 8–19–94; 8:45 am]

BILLING CODE 3510–DR–P

## Export Trade Certificate of Review

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 94–00005." A summary of the application follows.

### Summary of the Application:

*Applicant:* William E. Elliott (doing business as Export Exchange), P.O. Box 2777, Richmond, California 94802

Contact: William E. Elliott, Sole Proprietor

Telephone: (510) 547–6207

*Application No.:* 94–00005

*Date Deemed Submitted:* August 12, 1994

Members (in addition to applicant): None

William E. Elliott (d/b/a Export Exchange) seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

### Export Trade:

1. *Products*

All products.

2. *Services*

All services.

3. *Export Trade Facilitation Services (as they relate to the Export of Products and Services)*

All export trade facilitation services including, but not limited to, consulting; foreign market research; marketing and trade promotion; financing; insurance; licensing; services related to compliance with customs documentation and procedures; transportation and shipping; warehousing and other services to

facilitate the transfer of ownership and/or distribution; and communication and processing of export orders.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

**Export Trade Activities and Methods of Operation**

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, William E. Elliott (d/b/a Export Exchange) may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities as they relate to exporting Products and/or Services to the Export Markets;

c. Enter into exclusive sales agreements with Suppliers regarding sales of Products and/or Services in the Export Markets; such agreement may prohibit Suppliers from exporting independently of William E. Elliott (d/b/a Export Exchange);

d. Enter into exclusive sales and/or territorial agreements with distributors in the Export Markets;

e. Establish the price of Products and/or Services for sale in the Export Markets;

f. Allocate export orders among his Suppliers; and

g. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

**Definitions**

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product and/or Service.

Dated: August 16, 1994.

**W. Dawn Busby,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 94–20498 Filed 8–19–94; 8:45 am]

BILLING CODE 3510–DR–P

## National Oceanic and Atmospheric Administration

[I.D. 080394A]

### Financial Considerations in Relation to an Individual Fishing Quota Program; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of meeting teleconferencing sites; addendum.

**SUMMARY:** NMFS announces that two teleconferencing sites will be available for the meeting to discuss financial considerations in relation to the Individual Fishing Quota (IFQ) program for the fixed gear Pacific halibut and sablefish fisheries in and off of Alaska. The purpose of the meeting is to obtain information on methods of financing and lien recording from the financial community and other interested parties.

**DATES:** Monday, August 22, 1994, 1:00 p.m. - 4:00 p.m. A.s.t.

**ADDRESSES:** The meeting will be held at 605 W. 4th Ave. (Old Federal Building), Room 135, Anchorage, AK. Teleconferencing sites will be at: (1) 709 W 9th, Room 445C, Juneau, AK; and (2) 7600 Sand Point Way, Bldg. 4, Room 2143, Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** A meeting to discuss financial considerations in relation to the IFQ program for the fixed gear Pacific halibut and sablefish fisheries in and off of Alaska was announced at 59 FR 40533, August 9, 1994]. This notice announces that two teleconferencing sites will be available for this meeting (see DATES and ADDRESSES). For further information on the subject of the meeting, please refer to the **Federal Register** notice referenced above.

Dated: August 16, 1994.

**Richard H. Schaefer**

*Director, Office of Fisheries Conservation and Managment, National Marine Fisheries Service.*

[FR Doc. 94–20448 Filed 8–16–94; 2:47 pm]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

August 16, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

**EFFECTIVE DATE:** August 17, 1994.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the 1994 Guaranteed Access Level (GAL) for Category 433.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 67397, published on December 21, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 16, 1994.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive

concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 17, 1994 you are directed to increase the current Guaranteed Access Level (GAL) for the following category:

| Category | Guaranteed access level |
|---|---|
| 433 | 41,000 dozen. |

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 94–20499 Filed 8–19–94; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Closing Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held on September 6, 1994; September 13, 1994; September 20, 1994; and September 27, 1994, at 10:00 a.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

Under the provision of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close the meeting to the public because the matters considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 17, 1994.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–20528 Filed 8–19–94; 8:45 am]

BILLING CODE 5000–04–M

### Department of the Navy

### Privacy Act of 1974; Delete Record Systems

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Delete record systems.

**SUMMARY:** The Department of the Navy is deleting one system of records notice from its inventory of Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The deletion is effective August 22, 1994.

**ADDRESSES:** Send comments to the Acting Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris M. Lama at (703) 614–2004 or DSN 224–2004.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The deleted system of records is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 10, 1994.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N12290–2**

**SYSTEM NAME:**

Models for Organization Staffing and Design (MODS) *(February 22, 1993, 58 FR 10818).*

*Reason:* The system of records is obsolete. No records are being collected, maintained or stored.

[FR Doc. 94–20527 Filed 8–19–94; 8:45 am]

BILLING CODE 5000–04–F

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Meeting

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Notice of teleconference meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Subject Area Committee #2 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** September 6, 1994.

**TIME:** 11:00 a.m. to 12:00 Noon (ET).

**LOCATION:** 800 North Capitol Street NW., suite 825, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area Committee #2 of the National Assessment Governing Board will meet September 6, 1994 from 11:00 a.m. until 12:00 Noon. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The Committee will take final action on the science cognitive items for the 1995 NAEP field test.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of

Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC., from 8:30 a.m. to 5:00 p.m.

Dated: August 16, 1994.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 94–20482 Filed 8–19–94; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Grant and Cooperative Agreement Awards; Oregon Health Sciences University

**AGENCY:** U.S. Department of Energy, Richland Operations Office.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy, Richland Operations Office, announces that pursuant to Paragraph B of 10 CFR 600.7(b)(2)(i)(D), it intends to issue a noncompetitive grant award to the Oregon Health Sciences University. The award is planned for one (1) year project cycle, consisting of a twelve month budget period, from September 5, 1994 through August 31, 1995. The budget is estimated at $4,393,000.

**FOR FURTHER INFORMATION CONTACT:**

Patrick O'Donnell, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, Washington 99352, Telephone: (509) 376–2004.

**SUPPLEMENTARY INFORMATION:**

*Grant Award Number:* DE–FG06–94ER61918.

*Scope of Project:* The proposed financial assistance award is a grant to the University to fund a Health and Environmental Research Program. Activities will include models of advanced information communication research for regional health and environmental research. The University is currently performing activities related to those proposed. The Biomedical Information Communications Center has undertaken preliminary work in the development of an electronic health research information network. The public benefit derived from this research will be greatly enhanced with the financial support from the Department of Energy. It has been determined that a grant instrument is appropriate since the Department of Energy anticipates limited direct involvement with the program.

Dated: August 8, 1994.

**P.E. Rasmussen,**

*Acting Director, Procurement Division, Richland Operations Office.*

[FR Doc. 94–20538 Filed 8–19–94; 8:45 am]

BILLING CODE 6450–01–M

### Golden Field Office; Grant Award to University of Texas at Austin

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Texas at Austin, for continuing research efforts in support of the DOE Office of Building Energy Research programs. The project seeks to improve solar domestic hot water systems.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Cidney L. Bippus, Contract Specialist, 303–275–4793.

**SUPPLEMENTARY INFORMATION:** The proposed basic research will contribute to the DOE mission by assisting in the development of improved solar water heating technologies for use in buildings.

Successful completion of this research would advance the goal of wide commercialization of solar water heating systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $25,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado, on August 16, 1994.

**John W. Meeker,**

*Procurement Chief, Golden Field Office.*

[FR Doc. 94–20541 Filed 8–19–94; 8:45 am]

BILLING CODE 6450–01–M

### Office of Economic Impact and Diversity

### Guidelines for Department of Energy Mentor Protege Initiative

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of availability of guidelines and request for comment.

**SUMMARY:** The Department of Energy is publishing and requests comments on its draft guidelines for its Mentor-Protege Pilot Initiative. The Mentor-Protege Pilot Initiative is designed to encourage Department of Energy management and operating contractors to assist energy related small disadvantaged and women-owned businesses in enhancing their business and technical capabilities to ensure full participation in the mission of the Department.

**DATES:** Written comments on the draft guidelines and supporting materials are due on or before September 21, 1994.

**ADDRESSES:** Written comments (3 copies) should be submitted to: U.S. Department of Energy, Office of Small and Disadvantaged Business Utilization, 1707 H Street, Room 915, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda DeGraffenreid at (202) 254–5592.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose and Program Overview**

The Department Energy Mentor-Protege Pilot Initiative is designed to encourage Department of Energy management and operating contractors to assist energy related small disadvantaged businesses in enhancing their business and technical capabilities to ensure full participation in the mission of the Department. The use of this integrated working arrangement between companies will promote economic and technological growth, foster the establishment of long term business relationships and increase the number of small disadvantaged businesses that receive Department of Energy, other Federal and commercial contracts.

**B. General Policy**

(a) Department of Energy management and operating contractors who are approved as mentor firms may enter into agreements with eligible small disadvantaged businesses as protege firms to provide appropriate developmental assistance to enhance the business and technical capabilities of small disadvantaged businesses to

perform as contractors, subcontractors and suppliers.

(b) The mentor-protege initiatives described in these regulations constitutes a pilot program that will have a duration of two years with a one year option commencing from the date of the published final rule. During this period, management and operating contractors, which have received approval by the Department of Energy to participate in the program may enter into agreements with protege firms.

**C. Incentives for Mentor Participation**

(a) Active participation in the Department of Energy Mentor Protege Initiative may be a source selection factor in the awarding of Department of Energy contracts.

(b) The award fee evaluation plans contained in all Department of Energy Performance-Based Management contracts may include a factor for evaluation of a contractor's performance associated with Mentor-Protege initiative participation.

(c) Mentor firms shall receive credit toward Department of Energy subcontracting goals contained in their subcontracting plan.

**D. Mentor Firms**

Department of Energy mentor candidates must be:

(1) Management and operating contractors (M&Os) of Department of Energy facilities.

**E. Protege Firms**

Department of Energy Protege candidates must be:

(1) A small disadvantaged or women-owned small business concern as defined by Federal Acquisition Regulation;

(2) Certified as small in the Standard Industrial Classification code for the services or supplies to be provided by the protege to the mentor;

(3) Eligible for receipt of government contracts, and;

(4) In operation and actively engaged in an energy related, technical or construction business field for two years prior to applying for participation in the Mentor-Protege Initiative.

**F. Selection of Protege Firms**

(a) Protege selection will be implemented through a tier development plan as provided in subsection (b) below. This tier development plan is intended as a guide from which an "individualized" plan can be developed for each protege. The tier development structure recognizes the protege firms current business capacity and sets the parameters of assistance for monitoring purposes.

(b) Mentor firms are encouraged to select proteges from each of the following areas:

(1) Small disadvantaged businesses that presently have contracts or subcontracts with the Department;

(2) Small disadvantaged businesses that are presently 8(a) or 8(a) graduates under the Small Business Administration Program that have been actively engaged in business for at least five years; and

(3) Emerging small disadvantaged business firms that possess energy related or technical capability and have been actively engaged in business for at least two years.

(c) Once a protege firm has been selected for participation in the program, a Mentor-Protege Plan signed by the respective firms should be submitted to the Office of Small Disadvantaged Business Utilization for approval. At the minimum, the Plan should contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protege firm. Such assistance may not include payment of any monies.

The Mentor-Protege Plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protege's developmental success. The Plan shall include termination provisions complying with Notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the Department in order to determine the extent of compliance with the terms of the agreement.

**G. Measurement of Program Success**

The overall success of the pilot program will be measured by the extent to which it results in:

(a) An increase in the protege firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability.

(b) An increase in the number of value of contracts, subcontracts and suppliers by small disadvantaged business protege firms in industry categories where small disadvantaged businesses have not traditionally participated within the mentor firm's activity.

(c) The overall enhancement and development of protege firms as a competitive contractor, subcontractor, or supplier to the Department of Energy, other Federal agencies or commercial markets.

(d) Proteges after successfully completing one year under the Mentor-Protege Initiative program may seek multiple mentors provided conflict of interest provisions would not prevent such an arrangement and the approval of the Office of Small and Disadvantaged Business Utilization is received.

**H. Office of Small and Disadvantaged Business Utilization**

(a) All information submitted shall be reviewed and approved by the Department of Energy's Office of Small and Disadvantaged Business Utilization. The Office of Small and Disadvantaged Business Utilization will provide a copy of the submitted information to the cognizant Department of Energy program manager and contracting officer for a parallel review and concurrence.

(b) Upon agreement approval, the mentor may implement the developmental assistance under the program.

**I. Internal Controls by the Department**

(a) The Department of Energy's Office of Small and Disadvantaged Business Utilization will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

(1) Reviewing and evaluating mentor-protege applications for realism, validity and accuracy of provided information; and

(2) Reviewing semi-annual progress reports submitted by mentors and proteges on protege development to measure protege progress against the master plan contained in the approved agreement.

(3) Assurance from the mentor and protege firms that they will submit periodic reports and cooperate in any studies or surveys as may be required by the Department in order to determine the extent of compliance with the terms of their agreement.

(b) Failure of the mentor to meet the terms of the Mentor-Protege Plan may have an adverse affect on future award fee evaluation plans.

(c) Failure of the protege to meet the terms of the Mentor-Protege Plan may result in exclusion from future participation in the Mentor-Protege Program.

**J. Program Review**

At the conclusion of each year in the Mentor-Protege Initiative the mentor prime contractor and protege will formally brief the Department of Energy Office of Small and Disadvantaged Business Utilization, the head of the contracting activity, and the contracting

officer during a formal program review regarding program accomplishments as it pertains to the approved agreement. The Briefing may be held at either the Department of Energy Headquarters or the Mentor or Protege's site.

Issued in Washington, DC on August 10, 1994.

**Corlis S. Moody,**

*Director, Office of Economic Impact and Diversity.*

[FR Doc. 94–20539 Filed 8–19–94; 8:45 am]

BILLING CODE 6450–01–P

## Office of Fossil Energy

**[FE Docket No. 94–52–NG]**

## Conwest Exploration Company Limited; Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Conwest Exploration Company Limited authorization to import up to 200 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–20540 Filed 8–19–94; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. EL94–53–000, et al.]**

## Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings, August 12, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Arizona Public Service Company

[Docket No. EL94–53–000]

Take notice that on August 5, 1994, Arizona Public Service Company (APS) tendered for filing revised Fuel Cost Adjustment Cost Rate Sheet Exhibits to reflect accounting treatment afforded Spent Nuclear Disposal Cost refunds issued by the United States Department of Energy covering the period October, 1986, through January, 1994, in accordance with a Commission Letter Order dated July 22, 1994, issued in this Docket.

APS requests a waiver of the Commission Notice Requirements, 18 CFR 35.3 to allow for an effective date of October 1, 1986. APS also requests waiver of § 35.14 to the extent necessary.

Copies of this filing have been served upon the California Public Utilities Commission, the Arizona Corporation Commission and the affected parties, as follows:

| Customer name | APS/FPC/FERC rate schedule No. |
|---|---|
| Electrical District No. 3 | 12 |
| Tohomo O'Odham Utility Authority [1] | 52 |
| Welton-Mohawk Irrigation & Drainage District | 58 |
| Arizona Power Authority | 59 |
| Colorado River Indian Irrigation Project | 65 |
| Electrical District No. 1 | 68 |
| Town of Wickenburg | 74 |
| Southern California Edison Company | 120 |
| Electrical District No. 6 | 126 |
| Electrical District No. 7 | 128 |
| Electrical District No. 8 | 140 |
| Aguila Irrigation District | 141 |
| McMullen Valley Water Conservation & Drainage District | 142 |
| Tonopah Irrigation District | 143 |
| Citizens Utilities Company | 149 |
| Harquahala Valley Power District | 153 |
| Buckeye Water Conservation & Drainage District | 155 |
| Roosevelt Irrigation District | 158 |
| Maricopa County Municipal Water Conservation District | 168 |
| City of Williams | 192 |
| San Carlos Indian Irrigation Project | [2] 201 |

[1] Previously Papago Tribal Utility Authority.
[2] Previously APS–FPC Rate Schedule No. 66.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 2. North American Energy Conservation, Inc.

[Docket No. ER94–152–002]

Take notice that on July 28, 1994, North American Energy Conservation, Inc. filed certain information as required by the Commission's February 10, 1994, letter order in Docket No. ER94–152–000. Copies of North American Energy Conservation, Inc.'s informational filing are on file with the Commission and are available for public inspection.

### 3. Howell Power Systems, Inc.

[Docket No. ER94–178–002]

Take notice that on August 1, 1994, Howell Power Systems, Inc. filed certain information as required by the Commission's January 14, 1994, letter order in Docket No. ER94–178–000. Copies of Howell Power Systems, Inc.'s informational filing are on file with the Commission and are available for public inspection.

### 4. DC Tie, Inc.

[Docket No. ER91–435–013]

Take notice that on July 29, 1994, DC Tie, Inc. (DC Tie) filed certain information as required by the Commission's July 11, 1991, letter order in Docket No. ER91–435–000. Copies of DC Tie's informational filing are on file with the Commission and are available for public inspection.

### 5. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92–850–007]

Take notice that on July 26, 1994, Louis Dreyfus Electric Power, Inc. (Dreyfus) filed certain information as required by the Commission's December 2, 1992, letter order in this proceeding, 61 FERC ¶ 61,303 (1992). Copies of Dreyfus' informational filing are on file with the Commission and are available for public inspection.

### 6. AES Power, Inc.

[Docket No. ER94–890–002]

Take notice that on July 29, 1994, AES Power, Inc. filed certain information as required by the Commission's April 8, 1994, letter order in Docket No. ER94–890–000. Copies of AES Power, Inc.'s informational filing are on file with the Commission and are available for public inspection.

### 7. Electric Clearinghouse, Inc.

[Docket No. ER94–968–002]

Take notice that on July 29, 1994, Electric Clearinghouse, Inc. filed certain information as required by the Commission's April 7, 1994, letter order in Docket No. ER94–968–000. Copies of Electric Clearinghouse, Inc.'s informational filing are on file with the Commission and are available for public inspection.

### 8. Eclipse Energy, Inc.

[Docket No. ER94–1099–001]

Take notice that on July 29, 1994, Eclipse Energy, Inc. (Eclipse), filed certain information as required by the Commission's June 15, 1994, letter order in Docket No. ER94–1099–000. Copies

of Eclipse's informational filing are on file with the Commission and are available for public inspection.

**9. Direct Electric Inc.**

[Docket No. ER94–1161–001]

Take notice that on August 1, 1994, Direct Electric Inc. (Direct), filed certain information as required by the Commission's June 15, 1994, letter order in Docket No. ER94–1161–000. Copies of Direct's informational filing are on file with the Commission and are available for public inspection.

**10. New York State Electric & Gas Corporation**

[Docket No. ER94–1535–000]

Take notice that on August 4, 1994, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1993), as an initial rate schedule, an agreement with Allegheny Electric Cooperative (AEC). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to AEC and AEC will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on August 5, 1994, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and AEC.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**11. New England Power Company**

[Docket No. ER94–1537–000]

Take notice that on August 5, 1994, New England Power Company (NEP), tendered for filing a proposed addition of two entitlements for Boston Edison Company under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**12. Equitable Resources Marketing Company**

**Equitable Power Services Company**

[Docket No. ER94–1539–000]

Take notice that on August 5, 1994, Equitable Resources Marketing Company (Equitable) tendered for filing pursuant to 18 CFR 35.15 a notice of withdrawal of its FERC Electric Rate Schedule No. 1, effective no less than 60 days from the date of filing. Equitable Resources is canceling its rate schedule so that Equitable Power Services Company (Equitable Power) can take over its electric power marketing business. Equitable Power, in turn, tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective October 4, 1994.

Equitable Power intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Equitable Power sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Equitable Power is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**13. Alabama Power Company**

[Docket No. ER94–1540–000]

Take notice that on August 8, 1994, Alabama Power Company, tendered for filing a Delivery Point Specification Sheet dated as of August 15, 1994, which reflect the addition of a delivery point to the City of Dothan. This delivery point will be served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1986, being designated at FERC Rate Schedule No. 165. The parties request an effective date of August 15, 1994, for the addition of said delivery point.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**14. Illinois Power Company**

[Docket No. ER94–1541–000]

Take notice that on August 8, 1994, Illinois Power Company (IP) tendered for filing a change to Appendix A to the Interconnection Agreement between Central Illinois Power Service Company (CIPS), Illinois Power Company (IP), and Union Electric Company (UE). The change provides for an additional point of interconnection between CIPS and IP, CIPS–IP Connection 42—Rising. IP proposes an effective date of July 18, 1994, and therefore, requests waiver of the Commission's notice requirement.

IP also advises that it is cancelling Appendix "C" to the Reserve and Emergency Interchange Agreement dated December 15, 1993.

IP also tenders for filing changes to the Facility Use Agreement between IP and CIPS dated January 17, 1956, including the addition of Appendix "V" and cancellation of Appendix "E".

Copies of the filing have been served on CIPS, UE, and the Illinois Commerce Commission.

*Comment date:* August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**15. Black Hills Corporation**

[Docket No. ER94–1542–000]

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills) on August 8, 1994, tendered for filing an Economy Power Sale tariff and executed service agreements with Tri-State Generation and Transmission Association, Inc. and Public Service Company of Colorado.

Copies of the filing were provided to Basin Electric Power Cooperative, City of Gillette, Wyoming, Pacific Power & Light Company, Montana Power Company, Platte River Power Authority, Public Service Company of Colorado, Tri-State Generation and Transmission Association, Western Area Power Administration (Loveland and Billings area), and the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective August 8, 1994.

*Comment date:* August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**16. Portland General Electric**

[Docket No. ER94–1543–000 Company]

Take notice that on August 9, 1994, Portland General Electric Company (PGE), tendered for filing a tariff of general service providing for: Firm capacity/Energy service; Economy Energy Service; Provisional Energy Service; Exchange Service; Unit Contingent Capacity and/or Energy Service; Emergency Energy Service; Storage and Return of Energy Service.

Copies of the filing were served upon the list of entities, including all proposed customers under this tariff, appearing on the Certificate of Service attached to the filing letter.

*Comment date:* August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**17. Pennsylvania Electric Company**

[Docket No. ER94–1544–000]

Take notice that on August 9, 1994, Pennsylvania Electric Company (Penelec) tendered for filing a proposed reduction in its charges to Allegheny Electric Cooperative, Inc. (Allegheny Cooperative, (which is registered to do business in New Jersey, so as to eliminate from such charges Pennsylvania gross receipts taxes with respect to the deliveries by Penelec to Allegheny Cooperative for Allegheny Cooperative's resale to its New Jersey member cooperative, Sussex Rural Electric Cooperative (Sussex), and subsequently to the New Jersey members and customers of Sussex. Such power and energy is sold and delivered to Allegheny Cooperative through a delivery point located in Wantage Township, Sussex County, New Jersey and will be billed by Penelec to Allegheny Electric Cooperative, Inc., P.G. Box 190, Philipsburg, NJ 08865. The parties intend for the reduction in charges to become effective as of July 1, 1994, and Penelec requests waiver of the Commission's prior notice requirements. Penelec states that it has served copies of this filing on the Pennsylvania Public Utility Commission.

*Comment date:* August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**18. Iowa-Illinois Gas and Electric Company**

[Docket No. ER94–1547–000]

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, on August 10, 1994, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act the initial rate schedules in the form of Facilities Schedule No. 3, relating to Walcott Substation, dated July 12, 1994, and Facilities Schedule No. 4, relating to Blue Grass REC, dated July 12, 1994, to Service Schedule C to the Interconnection Agreement dated June 13, 1983, between Iowa-Illinois and Central Iowa Power Cooperative (CIPCO).

Iowa-Illinois states that the Facilities Schedules are a part of a major economic development effort by government and business leaders in the state of Iowa to locate a new $360 million steel mill to be owned and operated by IPSCO, Inc. (IPSCO) within the state. As a part of the effort, the state of Iowa enacted new legislation to provide economic incentives to IPSCO to locate the mill in Muscatine County, Iowa. The construction of the mill in Iowa is expected to provide approximately 350 additional jobs by 1997 and an increase in state and local tax revenues of approximately $143 million.

CIPCO will provide electric energy to the steel mill. However, to deliver the electric energy to the steel mill, utilization of Iowa-Illinois' transmission facilities and the construction of new transmission facilities by CIPCO will be required. The Facilities Schedules provide for the utilization, construction and modification of these facilities.

CIPCO plans to serve IPSCO's steel mill through two transmission sources utilizing Iowa-Illinois' transmission facilities. One source will require CIPCO to convert an existing 69 kV line between Iowa-Illinois' Substation 56 and CIPCO's Fair Station to 161 kV, disconnect the line at Fair Station and connect it to the IPSCO Substation. The other source will require CIPCO to construct a new 345 kV transmission line extending from the new Walcott Substation and terminating at the IPSCO Substation adjacent to the steel mill. Under Facilities Schedule No. 3, CIPCO's new line will interconnect at the Walcott Substation with Iowa-Illinois's 345 kV transmission line which extends from Hills Substation to Substation 56. CIPCO will own Walcott Substation and Iowa-Illinois will operate and maintain the substation at CIPCO's expense.

The portion of the transmission service which uses the interconnection at Substation 56 will be provided pursuant to the Agreement for Interconnection of Transmission Facilities dated March 4, 1963 entered into by Iowa-Illinois, Iowa Electric Light and Power Company (predecessor in interest to IES Utilities Inc.) and Eastern Iowa Light and Power Cooperative (predecessor in interest to CIPCO). The remaining transmission service will be provided as required by Facilities Schedule No. 3.

Under Facilities Schedule No. 4, Iowa-Illinois will supply all energy required at CIPCO's Blue Grass REC Substation to the Point of Connection between CIPCO and Iowa-Illinois. CIPCO will deliver an equivalent amount of energy including losses on a scheduled basis to Iowa-Illinois at the Point of Connection.

The Facilities Schedules provide that they will be effective upon their acceptance for filing by the Commission. Iowa-Illinois requests the Commission to accept the Facilities Schedules for filing by November 30, 1994.

Copies of the filing were served upon the Illinois Commerce Commission, the Iowa Utilities Board and CIPCO.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**19. Nevada Power Company**

[Docket No. FA92–38–002]

Take notice that on August 1, 1994, Nevada Power Company tendered for filing its refund report in the above-referenced docket. Nevada Power Company's revised refund report corrects for certain errors contained in its initial refund report filed on September 20, 1993, and noticed on October 27, 1993, under Docket No. FA92–38–001.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

**20. Washington Power Company, L.P.**

[Docket No. QF88–20–001]

On August 4, 1994, as supplemented on August 5, 1994, Washington Power Company, L.P. (Applicant) of 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195–1501, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, which will be located in Robinson Township, Washington County, Pennsylvania, consists of two circulating fluidized bed boilers, a steam turbine generator, and a 3/4 mile 138 kV transmission line, with a net electric power production capacity of approximately 85 MW. According to the Applicant, the primary energy source of the facility is bituminous coal waste. Construction of the facility commenced in July of 1994.

Comment date: Thirty days after publication of this notice in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20484 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. ER94–24–004, et al.]**

## Enron Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 15, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Enron Power Marketing, Inc.

[Docket No. ER94–24–004]

Take notice that on August 1, 1994, Enron Power Marketing, Inc. tendered for filing its summary of activity for the quarter ending June 30, 1994.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 2. Allegheny Power Service Corporation on Behalf of West Penn Power Company

[Docket No. ER94–1064–000]

Take notice that on August 8, 1994, Allegheny Power Service Corporation, on behalf of West Penn Power Company, Monongahela Power Company, Ohio Edison Company and Pennsylvania Power Company, filed Revision 1 to Amendment No. 13 to the Interchange Agreement dated October 17, 1968. The parties filed this Revision to the Interchange Agreement in accordance with Staff recommendations, transmitting documents to complete the filing requirements for Docket No. ER94–1064–000.

Copies of the filing were served upon the public utility's relevant state public regulatory commissions.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 3. Continental Energy Services

[Docket No. ER94–1488–000]

Take notice that Continental Energy Services (Continental) on July 25, 1994, tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective within 60 days after filing.

Continental intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Continental purchases power, including capacity and related service from electric utilities, qualifying facilities and independent power producers, and resells such power to other producers, Continental will be functioning as a marketer. In Continental's marketing transactions, Continental proposes to charge rates mutually agreed upon by the parties. All sales will be at arm's length, and no sales will be made to affiliated entities. In transactions where Continental does not take title to electric power and/or energy, Continental will be limited to the role of a broker and charge a fee for its services. Continental is not in the business of producing or transmitting electric power. Continental does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 4. Public Service Company of New Hampshire

[Docket No. ER94–1513–000]

Take notice that on August 5, 1994, Public Service Company of New Hampshire tendered for filing Exhibit 4 in the above-referenced docket that was inadvertently omitted from its August 1, 1994, filing.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 5. EDC Power Marketing, Inc.

[Docket No. ER94–1538–000]

Take notice that EDC Power Marketing, Inc. (the Petitioner) on August 5, 1994, tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1.

The Petitioner intends to engage in wholesale electric power transactions as a marketer. The Petitioner will purchase power, including energy, capacity and related transmission services from electric utilities, qualifying facilities and independent power producers, and resell such power to other purchasers. The Petitioner proposes to charge rates mutually agreed upon by the parties. No sales will be made to affiliated entities. The Petitioner is not in the business of producing electric power. The Petitioner does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and transmission capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 6. Black Hills Power and Light Company

[Docket No. ER94–1542–000]

Take notice that on August 9, 1994, Black Hills Power and Light Company tendered for filing an amendment to its August 1, 1994, filing in the above-referenced docket.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 7. Calpine Power Marketing, Inc.

[Docket No. ER94–1545–000]

Take notice that on August 9, 1994, Calpine Power Marketing, Inc. (CMPI) petitioned the Commission for acceptance of CPMI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. CPMI is a direct subsidiary of Calpine Corporation which, through other subsidiaries, owns and operates non-utility generating facilities and related business ventures in the United States. Calpine Corporation is indirectly owned by CS Holding of Zurich, Switzerland, which, through other subsidiaries, owns utility generating facilities in Europe, financial service providers and other entities.

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 8. Thomas C. Simpson

[Docket No. ID–2851–000]

Take notice that on August 1, 1994, Thomas C. Simpson (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—El Paso Electric Company

Director—United New Mexico Bank at Las Cruces

*Comment date:* August 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20485 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket Nos. ST94–5608–000 et al.]**

## Pacific Gas Transmission Co.; Notice of Self-Implementing Transactions

August 16, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's regulations and section 311(b) of the NGPA. Any interested person may filed a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

**Lois D. Cashell,**

*Secretary.*

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5608 | Pacific Gas Transmission Co. | Coastal Gas Marketing Co. | 06–01–94 | G–S | 200,000 | N | F | 05–05–94 | Indef. |
| ST94–5609 | Mississippi River Trans. Corp. | Associated Natural Gas, Inc. | 06–01–94 | G–S | 50,000 | N | I | 05–02–94 | Indef. |
| ST94–5610 | Pacific Gas Transmission Co. | Sacramento Municipal Utility Dist. | 06–01–94 | G–S | 12,101 | N | F | 05–01–94 | Indef. |
| ST94–5611 | Florida Gas Transmission Co. | U.S. Agri-Chemical Corp. | 06–01–94 | G–S | 3,562 | N | I | 05–01–94 | Indef. |
| ST94–5612 | Florida Gas Transmission Co. | International Paper Co. | 06–01–94 | G–S | 5,653 | N | I | 05–01–94 | Indef. |
| ST94–5613 | Florida Gas Transmission Co. | Florida Juice, Inc | 06–01–94 | G–S | 3,000 | N | I | 05–02–94 | Indef. |
| ST94–5614 | Florida Gas Transmission Co. | Buckeye Florida, L.P. | 06–01–94 | G–S | 14,642 | N | I | 05–01–94 | Indef. |

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5615 | Florida Gas Transmission Co. | Consolidated Minerals, Inc. | 06–01–94 | G–S | 6,901 | N | I | 05–01–94 | Indef. |
| ST94–5616 | Florida Gas Transmission Co. | Farmland Hydro, L.P. | 06–01–94 | G–S | 3,896 | N | I | 05–01–94 | Indef. |
| ST94–5617 | Florida Gas Transmission Co. | Rinker Materals Corp. | 06–01–94 | G–S | 8,630 | N | I | 05–01–94 | Indef. |
| ST94–5618 | Florida Gas Transmission Co. | Kissimmee Utility Authority. | 06–01–94 | G–S | 1,257 | N | I | 05–01–94 | Indef. |
| ST94–5619 | Florida Gas Transmission Co. | Aluminum Co. of America. | 06–01–94 | G–S | 171 | N | I | 05–02–94 | Indef. |
| ST94–5620 | K N Wattenberg Transmission LLC. | Basin Exploration, Inc. | 06–03–94 | G–S | 5,000 | N | I | 06–01–93 | 04–01–11 |
| ST94–5621 | Midwestern Gas Transmission Co. | Eastex Hydrocarbons, Inc. | 06–03–94 | G–S | 12,403 | N | F | 05–14–94 | Indef. |
| ST94–5622 | Florida Gas Transmission Co. | Georgia Pacific Corp. | 06–03–94 | G–S | 24,658 | N | I | 05–13–94 | Indef. |
| ST94–5623 | Florida Gas Transmission Co. | Chesapeake Utilities Corp. | 06–03–94 | G–S | 6,301 | N | I | 05–14–94 | Indef. |
| ST94–5624 | Florida Gas Transmission Co. | Fort Pierce Utilities Authority. | 06–03–94 | G–S | 1,370 | N | I | 05–07–94 | Indef. |
| ST94–5625 | Florida Gas Transmission Co. | St. Joe Natural Gas Co. | 06–03–94 | G–S | 1,520 | N | I | 05–06–94 | Indef. |
| ST94–5626 | Florida Gas Transmission Co. | Gainesville Regional Utilities. | 06–03–94 | G–S | 9,818 | N | I | 05–04–94 | Indef. |
| ST94–5627 | Florida Gas Transmission Co. | City of Vero Beach. | 06–03–94 | G–S | 2,332 | N | I | 05–04–94 | Indef. |
| ST94–5628 | Florida Gas Transmission Co. | Orlando Utilities Commission. | 06–03–94 | G–S | 35,616 | N | I | 05–04–94 | Indef. |
| ST94–5629 | El Paso Natural Gas Co. | Mobil Natural Gas Inc. | 06–03–94 | G–S | 46,350 | N | I | 05–05–94 | Indef. |
| ST94–5630 | Chandeleur Pipe Line Co. | Mid-Louisiana Marketing Co. | 06–03–94 | G–S | 20,000 | N | F/I | 03–01–94 | Indef. |
| ST94–5631 | Northern Illinois Gas Co. | Natural Gas P/L Co. of Amer., et al. | 06–01–94 | G–HT | 100,000 | N | I | 04–09–94 | 04–30–94 |
| ST94–5632 | Northern Illinois Gas Co. | Natural Gas P/L Co. of Amer., et al. | 06–01–94 | G–HT | 2,000 | N | I | 04–17–94 | 04–30–94 |
| ST94–5633 | KCS Texas Intra. Gas P/L Co. | Texas Eastern Transmission Corp. | 06–01–94 | C | 30,000 | N | I | 05–01–94 | Indef. |
| ST94–5634 | Superior Offshore Pipeline Co. | Goodrich Oil Co . | 06–06–94 | G–S | 10,000 | N | I | 04–01–94 | Indef. |
| ST94–5635 | Panhandle Eastern Pipe Line Co. | Aurora Natural Gas & A/P., L.C. | 06–06–94 | G–S | 1,975 | N | F | 05–12–94 | 01–31–95 |
| ST94–5636 | Columbia Gas Transmission Corp. | Dayton Power & Light Co. | 06–06–94 | G–S | 52,031 | N | F | 06–01–94 | Indef. |
| ST94–5637 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–06–94 | G–S | 456,876 | Y | F | 06–01–94 | Indef. |
| ST94–5638 | Columbia Gas Transmission Corp. | Tristar Gas Co ... | 06–06–94 | G–S | 25,000 | N | F/I | 06–01–94 | Indef. |

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5639 | Columbia Gas Transmission Corp. | Torch Gas LC .... | 06–06–94 | G–S | 100,000 | N | F/I | 06–01–94 | Indef. |
| ST94–5640 | Columbia Gas Transmission Corp. | D.C. Malcolm, Inc. | 06–06–94 | G–S | 400 | N | I | 06–01–94 | Indef. |
| ST94–5641 | Columbia Gas Transmission Corp. | Volunteer Energy Corp. | 06–06–94 | G–S | 2,500 | N | F | 06–01–94 | Indef. |
| ST94–5642 | Northern Illinois Gas Co. | Natural Gas P/L Co. of Amer. et al. | 06–08–94 | G–HT | 10,000 | N | I | 05–20–94 | 05–31–94 |
| ST94–5643 | Northern Illinois Gas Co. | Natural Gas P/L Co. of Amer. et al. | 06–08–94 | G–HT | 6,000 | N | I | 05–19–94 | 06–10–94 |
| ST94–5644 | Northern Natural Gas Co. | Cargill, Inc. | 06–07–94 | G–S | 100,000 | N | I | 05–01–94 | Indef. |
| ST94–5645 | Northern Natural Gas Co. | Michigan Gas Co | 06–07–94 | G–S | 500,000 | N | I | 05–01–94 | Indef. |
| ST94–5646 | Northern Natural Gas Co. | Wisconsin Power & Light Co. | 06–07–94 | G–S | 2,000,000 | N | I | 04–01–94 | Indef. |
| ST94–5647 | Northern Natural Gas Co. | Pancanadian Petroleum Co. | 06–07–94 | G–S | 50,000 | N | I | 04–26–94 | Indef. |
| ST94–5648 | Northern Natural Gas Co. | Cedar Falls Utilities. | 06–07–94 | G–S | 10,000 | N | I | 03–28–94 | Indef. |
| ST94–5649 | Northern Natural Gas Co. | Interstate Power Co. | 06–07–94 | G–S | 20,000 | N | I | 03–17–94 | Indef. |
| ST94–5650 | Northern Natural Gas Co. | Wescana Energy Market. (U.S.) Inc. | 06–07–94 | G–S | 50 | N | I | 05–04–94 | Indef. |
| ST94–5651 | Northern Natural Gas Co. | Clayton Energy Corp. | 06–07–94 | G–S | 25,000 | N | I | 03–23–94 | Indef. |
| ST94–5652 | Natural Gas P/L Co. of America. | Northern Illinois Gas Co. | 06–08–94 | G–S | 10,000 | N | F | 06–01–94 | 12–01–95 |
| ST94–5653 | Natural Gas P/L Co. of America. | Texaco Gas Marketing Inc. | 06–08–94 | G–S | 20,000 | N | F | 06–01–94 | 06–30–94 |
| ST94–5654 | Natural Gas P/L Co. of America. | Northern Illinois Gas Co. | 06–08–94 | G–S | 50,000 | N | F | 06–01–94 | 12–01–95 |
| ST94–5655 | Natural Gas P/L Co. of America. | Northern Illinois Gas Co. | 06–08–94 | G–S | 94,097 | N | F | 06–01–94 | 12–01–95 |
| ST94–5656 | Natural Gas P/L Co. of America. | Catex Vitol Gas, Inc. | 06–08–94 | G–S | 20,000 | N | F | 06–01–94 | 06–30–94 |
| ST94–5657 | Natural Gas P/L Co. of America. | Northern Illinois Gas Co. | 06–08–94 | G–S | 50,000 | N | F | 06–01–94 | 12–01–95 |
| ST94–5658 | Viking Gas Transmission Co. | Northern States Power Co. | 06–08–94 | G–S | 56,000 | Y | F | 06–01–94 | 10–31–08 |
| ST94–5659 | Viking Gas Transmission Co. | Northern States Power Co. | 06–08–94 | G–S | 17,608 | Y | I | 06–01–94 | 10–31–08 |
| ST94–5660 | Viking Gas Transmission Co. | Northern States Power Co.-Wisconsin. | 06–08–94 | G–S | 22,200 | Y | F | 06–01–94 | 10–31–08 |
| ST94–5661 | Viking Gas Transmission Co. | Northern States Power Co.-Wisconsin. | 06–08–94 | G–S | 6,092 | Y | I | 06–01–94 | 10–31–08 |
| ST94–5662 | Viking Gas Transmission Co. | Poco Petroleums Ltd. | 06–08–94 | G–S | 4,911 | N | F | 05–01–94 | Indef. |
| ST94–5663 | Viking Gas Transmission Co. | Cibola Corp. ..... | 06–08–94 | G–S | 20,000 | N | F | 05–01–94 | Indef. |
| ST94–5664 | Enogex Inc. | Phillips Gas Pipeline Co. | 06–07–94 | C | 15,000 | N | I | 05–13–94 | Indef. |
| ST94–5665 | Colorado Interstate Gas Co. | Public Service Company of Colorado. | 06–08–94 | B | 481,790 | N | F | 05–11–94 | 09–30–96 |
| ST94–5666 | CNG Transmission Corp. | KN Gas Marketing. | 06–08–94 | G–S | 100,000 | N | I | 05–01–94 | 06–30–94 |
| ST94–5667 | CNG Transmission Corp. | Commonwealth Gas Co. | 06–08–94 | G–S | 10,380 | N | F | 05–01–94 | 03–31–03 |

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5668 | Channel Industries Gas Co. | NGC Transportation, Inc. | 06–09–94 | G–I | 25,000 | N | I | 05–11–94 | Indef. |
| ST94–5669 | Black Marlin Pipeline Co. | Energy Development Corp. | 06–09–94 | G–S | 40,000 | Y | I | 06–01–94 | Indef. |
| ST94–5670 | Ozark Gas Transmission System. | Unimark L.L.C. | 06–09–94 | G–S | 10,000 | N | I | 05–10–94 | Indef. |
| ST94–5671 | Northern Natural Gas Co. | Interenergy Gas Services, Corp. | 06–10–94 | G–S | 50,000 | N | I | 05–11–94 | Indef. |
| ST94–5672 | Algonquin Gas Transmission Co. | Entrade Corp. | 06–10–94 | G–S | 200,000 | N | I | 05–28–94 | Indef. |
| ST94–5673 | Algonquin Gas Transmission Co. | Coastal Gas Marketing Co. | 06–10–94 | G–S | 8,101,370 | N | I | 05–26–94 | Indef. |
| ST94–5674 | Midcon Texas Pipeline Corp. | Natural Gas P/L Co. of America. | 06–10–94 | C | 50,000 | N | I | 05–20–94 | Indef. |
| ST94–5675 | Williams Natural Gas Co. | Tenaska Marketing Ventures. | 06–10–94 | G–S | 18,867 | N | I | 05–26–94 | 11–01–94 |
| ST94–5676 | Williams Natural Gas Co. | Margasco Partnership. | 06–10–94 | G–S | 15,000 | N | I | 05–26–94 | Indef. |
| ST94–5677 | Viking Gas Transmission Co. | Western Gas Marketing Inc. | 06–13–94 | G–S | 5,076 | N | F | 06–01–94 | 06–30–94 |
| ST94–5678 | Acadian Gas Pipeline System. | Natural Gas P/L Co. of Amer. et al. | 06–13–94 | C | 10,000 | N | I | 06–01–94 | Indef. |
| ST94–5679 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 12,000 | Y | I | 06–01–94 | Indef. |
| ST94–5680 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 5,000 | N | I | 06–01–94 | Indef. |
| ST94–5681 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 132 | N | I | 06–01–94 | Indef. |
| ST94–5682 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 400 | N | I | 06–01–94 | Indef. |
| ST94–5683 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 3,000 | N | I | 06–01–94 | Indef. |
| ST94–5684 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 500 | N | I | 06–01–94 | Indef. |
| ST94–5685 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 6,000 | N | I | 06–01–94 | Indef. |
| ST94–5686 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 54,009 | N | I | 06–01–94 | Indef. |
| ST94–5687 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 2,800 | N | I | 06–01–94 | Indef. |
| ST94–5688 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 1,400 | N | I | 06–01–94 | Indef. |
| ST94–5689 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 12,000 | N | I | 06–01–94 | Indef. |
| ST94–5690 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 15,000 | Y | I | 06–01–94 | Indef. |
| ST94–5691 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 3,000 | Y | I | 06–01–94 | Indef. |
| ST94–5692 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 103 | Y | I | 06–01–94 | Indef. |
| ST94–5693 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 150 | Y | I | 06–01–94 | Indef. |

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| ST94–5694 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 3,300 | Y | I | 06–01–94 | Indef. |
| ST94–5695 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 1,500 | Y | I | 06–01–94 | Indef. |
| ST94–5696 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 550 | Y | I | 06–01–94 | Indef. |
| ST94–5697 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 5,444 | Y | I | 06–01–94 | Indef. |
| ST94–5698 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 8,800 | Y | I | 06–01–94 | Indef. |
| ST94–5699 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 4,000 | Y | I | 06–01–94 | Indef. |
| ST94–5700 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 425 | Y | I | 06–01–94 | Indef. |
| ST94–5701 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 1,240 | Y | I | 06–01–94 | Indef. |
| ST94–5702 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 2,500 | Y | I | 06–01–94 | Indef. |
| ST94–5703 | Columbia Gas Transmission Corp. | Texpar Energy, Inc. | 06–13–94 | G–S | 5,000 | N | I | 06–01–94 | Indef. |
| ST94–5704 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 16,000 | N | I | 06–01–94 | Indef. |
| ST94–5705 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 50,000 | N | I | 06–01–94 | Indef. |
| ST94–5706 | Columbia Gas Transmission Corp. | Baltimore Gas & Electric Co. | 06–13–94 | B | 10,300 | N | I | 06–01–94 | Indef. |
| ST94–5707 | Columbia Gas Transmission Corp. | Baltimore Gas Electric Co. | 06–13–94 | B | 1,000 | N | I | 06–01–94 | Indef. |
| ST94–5708 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 2,000 | Y | I | 06–01–94 | Indef. |
| ST94–5709 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 300 | Y | I | 06–01–94 | Indef. |
| ST94–5710 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 26 | Y | I | 06–01–94 | Indef. |
| ST94–5711 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 5,000 | Y | I | 06–01–94 | Indef. |
| ST94–5712 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 1,200 | Y | I | 06–01–94 | Indef. |
| ST94–5713 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 3,500 | Y | I | 06–01–94 | Indef. |
| ST94–5714 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 237 | Y | I | 06–01–94 | Indef. |
| ST94–5715 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 4,000 | Y | I | 06–01–94 | Indef. |
| ST94–5716 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 5,500 | Y | I | 06–01–94 | Indef. |
| ST94–5717 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 06–13–94 | B | 14,420 | Y | I | 06–01–94 | Indef. |

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| ST94–5718 | Midwestern Gas Transmission Corp. | Associated Natural Gas. Inc. | 06–14–94 | G–S | 30,637 | N | F | 05–17–94 | Indef. |
| ST94–5719 | Midwestern Gas Transmission Corp. | Eastex Hydrocarbons Inc. | 06–14–94 | G–S | 6,000 | N | F | 05–28–94 | Indef. |
| ST94–5720 | Midwestern Gas Transmission Corp. | Tenneco Gas Marketing Co. | 06–14–94 | G–S | 23,126 | A | F | 06–04–94 | Indef. |
| ST94–5721 | Viking Gas Transmission Co. | City of Warren ... | 06–14–94 | G–S | 412 | N | I | 11–01–93 | 10–31–02. |
| ST94–5722 | Viking Gas Transmission Co. | Cibola Corp ..... | 06–14–94 | G–S | 48,000 | N | F | 04–01–94 | 04–30–94 |
| ST94–5723 | Midwestern Gas Transmission Co. | Eastex Hydrocarbons, Inc. | 06–14–94 | G–S | 9,574 | N | F | 06–01–94 | Indef. |
| ST94–5724 | Trailblazer Pipeline Co. | Cenergy, Inc ..... | 06–14–94 | G–S | 20,000 | N | I | 06–01–94 | Indef. |
| ST94–5725 | Texas Gas Transmission Corp. | Union Oil Co. of California. | 06–14–94 | G–S | 1,000 | N | I | 06–02–94 | Indef. |
| ST94–5726 | South Georgia Natural Gas Co. | Florida Power Corp. | 06–14–94 | G–S | 10,000 | Y | F | 06–01–94 | 04–03–02 |
| ST94–5727 | Tennessee Gas Pipeline Co. | NGC Transportation, Inc. | 06–15–94 | G–S | 1,250 | N | F | 05–21–94 | Indef. |
| ST94–5728 | Tennessee Gas Pipeline Co. | Noble Gas Marketing, Inc. | 06–15–94 | G–S | 30,000 | N | I | 06–13–94 | Indef. |
| ST94–5729 | Texas Gas Gathering Co. | Natural Gas P/L Co. of America. | 06–15–94 | C | 1,250 | N | I | 06–01–94 | 06–30–98 |
| ST94–5730 | Delhi Gas Pipeline Corp. | ANR Pipeline Co. et al. | 06–15–94 | C | 10,000 | N | I | 06–01–94 | Indef. |
| ST94–5731 | Columbia Gulf Transmission Co. | AIG Trading Corp. | 06–15–94 | G–S | 100,000 | N | I | 05–20–94 | Indef. |
| ST94–5732 | Columbia Gulf Transmission Co. | Con Edison Gas Marketing, Inc. | 06–15–94 | G–S | 50,000 | N | I | 06–01–94 | Indef. |
| ST94–5733 | Columbia Gulf Transmission Co. | Noble Gas Marketing, Inc. | 06–15–94 | G–S | 30,000 | N | I | 06–01–94 | Indef. |
| ST94–5734 | Columbia Gulf Transmission Co. | Petroleum Source and Systems Group. | 06–15–94 | G–S | 30,000 | N | I | 06–01–94 | Indef. |
| ST94–5735 | Columbia Gulf Transmission Co. | Progas, Inc ..... | 06–15–94 | G–S | 5,000 | N | I | 06–01–94 | Indef. |
| ST94–5736 | Colorado Interstate Gas Co. | Snyder Oil Corp . | 06–15–94 | G–S | 10,000 | N | F | 06–01–94 | 05–31–00 |
| ST94–5737 | Southern Natural Gas Co. | Ford Motor Co ... | 06–15–94 | G–S | 1,020 | N | F | 06–01–94 | 06–30–94 |
| ST94–5738 | Southern Natural Gas Co. | South Carolina Pipeline Corp. | 06–15–94 | G–S | 82,783 | N | F | 06–01–94 | 10–31–03 |
| ST94–5739 | Southern Natural Gas Co. | Scana Hydrocarbons, Inc. | 06–15–94 | G–S | 5,000 | N | F | 06–01–94 | 06–30–94 |
| ST94–5740 | Southern Natural Gas Co. | NGC Transportation Inc. | 06–15–94 | G–S | 20,000 | N | I | 05–28–94 | Indef. |
| ST94–5741 | Southern Natural Gas Co. | Oryx Gas Marketing Limited Part. | 06–15–94 | G–S | 15,000 | N | F | 05–25–94 | 05–31–94 |
| ST94–5742 | Southern Natural Gas Co. | Florida Power Corp. | 06–15–94 | G–S | 10,050 | N | F | 06–01–94 | 04–30–02 |
| ST94–5743 | Southern Natural Gas Co. | South Carolina Pipeline Corp. | 06–15–94 | G–S | 77,217 | N | F | 06–01–94 | 10–31–03 |
| ST94–5744 | National Fuel Gas Supply Corp. | Public Service Electric and Gas Co. | 06–16–94 | G–S | 2,356 | N | F | 08–01–93 | 10–31–94 |

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| ST94–5745 | National Fuel Gas Supply Corp. | Columbia Gas Transmission Corp. | 06–16–94 | G–S | 15,306 | N | F | 06–03–94 | 10–31–94 |
| ST94–5746 | National Fuel Gas Supply Corp. | Iroquois Energy Management, Inc. | 06–16–94 | G–S | 6,500 | N | I | 04–01–94 | 01–31–11 |
| ST94–5747 | National Fuel Gas Supply Corp. | National Fuel Resources, Inc. | 06–16–94 | G–S | 35,000 | Y | I | 05–29–94 | 05–27–04 |
| ST94–5748 | National Fuel Gas Supply Corp. | CNG Gas Services Corp. | 06–16–94 | G–S | 20,000 | N | I | 05–11–94 | 04–30–14 |
| ST94–5749 | Natural Gas P/L Co of America. | Northern Illinois Gas Co. | 06–16–94 | G–S | 59,995 | N | F | 06–01–94 | 12–01–95 |
| ST94–5750 | Natural Gas P/L Co of America. | Northern Illinois Gas Co. | 06–16–94 | G–S | 171,521 | N | F | 06–01–94 | 12–01–95 |
| ST94–5751 | Kern River Gas Transmission Co. | Southwest Gas Corp. | 06–16–94 | B | 700,000 | N | I | 06–04–94 | Indef. |
| ST94–5752 | Southern Natural Gas Co. | Sonat Marketing Co. | 06–16–94 | G–S | 50,000 | A | I | 06–01–94 | Indef. |
| ST94–5753 | Noram Gas Transmission Co. | Tyson Foods, Inc | 06–17–94 | G–S | 180 | N | F | 06–01–94 | Indef. |
| ST94–5754 | Noram Gas Transmission Co. | Koch Gas Services Co. | 06–17–94 | G–S | 13,000 | N | F | 05–01–94 | Indef. |
| ST94–5755 | Noram Gas Transmission Co. | Alumax Magnolia Division. | 06–17–94 | G–S | 800 | N | F | 06–01–94 | Indef. |
| ST94–5756 | Noram Gas Transmission Co. | Arkansas Industrial Uniform Service. | 06–17–94 | G–S | 241 | N | F | 06–01–94 | Indef. |
| ST94–5757 | Noram Gas Transmission Co. | Coleman Heat Treating. | 06–17–94 | G–S | 234 | N | F | 06–01–94 | Indef. |
| ST94–5758 | Noram Gas Transmission Co. | Noram Energy Services Inc. | 06–17–94 | G–S | 8,000 | N | F | 06–01–94 | 07–01–96 |
| ST94–5759 | Noram Gas Transmission Co. | Willamette Industries, Inc. | 06–17–94 | G–S | 400 | N | F | 06–01–94 | Indef. |
| ST94–5760 | Noram Gas Transmission Co. | Willamette Industries, Inc. | 06–17–94 | G–S | 150 | N | F | 06–01–94 | Indef. |
| ST94–5761 | Colorado Interstate Gas Co. | Enron Gas Marketing, Inc. | 06–17–94 | G–S | 10,000 | N | F | 06–08–94 | 09–30–94 |
| ST94–5762 | Colorado Interstate Gas Co. | Grand Valley Gas Co. | 06–17–94 | B | 10,000 | N | F | 06–01–94 | 08–31–94 |
| ST94–5763 | Colorado Interstate Gas Co. | NGC Transportation, Inc. | 06–17–94 | G–S | 20,000 | N | F | 06–01–94 | 06–30–95 |
| ST94–5764 | Colorado Interstate Gas Co. | Western Gas Resources, Inc. | 06–17–94 | G–S | 20,000 | N | F | 06–03–94 | 05–31–95 |
| ST94–5765 | Colorado Interstate Gas Co. | Associated Intrastate Pipeline Co. | 06–17–94 | G–S | 15,000 | N | F | 06–01–94 | 09–30–94 |
| ST94–5766 | Noark Pipeline System, L.P. | Arkansas Western P/L Co., et al. | 06–17–94 | C | 45,000 | N | I | 10–01–92 | Indef. |
| ST94–5767 | Midwestern Gas Transmission Co. | Woodward Marketing, Inc. | 06–17–94 | G–S | 800 | N | F | 06–01–94 | Indef. |
| ST94–5768 | Tennessee Gas Pipeline Co. | Tenneco Gas Processing Co. | 06–17–94 | G–S | 338 | Y | I | 06–01–94 | Indef. |
| ST94–5769 | Midwestern Gas Transmission Co. | Tenneco Gas Marketing Co. | 06–17–94 | G–S | 10,000 | Y | F | 06–03–94 | Indef. |
| ST94–5770 | Cypress Gas Pipeline Co. | ANR Pipeline Co., et al. | 06–20–94 | C | 25,000 | N | I | 06–01–94 | Indef. |
| ST94–5771 | Natural Gas P/L Co. of America. | Entrade Corp ..... | 06–20–94 | G–S | 250,000 | N | I | 10–01–90 | Indef. |

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| ST94–5772 | Transok, Inc ..... | ANR Pipeline Co., et al. | 06–20–94 | C | 20,000 | N | I | 02–01–94 | Indef. |
| ST94–5773 | Transok, Inc ..... | ANR Pipeline Co., et al. | 06–20–94 | C | 10,000 | N | I | 02–01–94 | Indef. |
| ST94–5774 | Texas Eastern Transmission Corp. | Clinton Gas Marketing, Inc. | 06–20–94 | G–S | 10,350 | N | I | 05–05–94 | 09–30–94 |
| ST94–5775 | Natural Gas P/L Co. of America. | Northern Illinois Gas Co. | 06–20–94 | G–S | 19,903 | N | F | 06–01–94 | 12–01–95 |
| ST94–5776 | Natural Gas P/L Co. of America. | Catex Vitol Gas, Inc. | 06–20–94 | G–S | 15,000 | N | F | 06–01–94 | 06–30–94 |
| ST94–5777 | Colorado Interstate Gas Co. | Montana Power Co. | 06–21–94 | B | 2,000 | N | I | 06–01–94 | Indef. |
| ST94–5778 | Trunkline Gas Co | The Peoples Gas Light and Coke Co. | 06–21–94 | G–S | 40,000 | N | F | 06–01–94 | 08–31–94 |
| ST94–5779 | Channel Industries Gas Co. | Tennessee Gas Pipeline Co., et al. | 06–21–94 | C | 50,000 | Y | I | 05–27–94 | Indef. |
| ST94–5780 | Texas Eastern Transmission Corp. | Mid-Louisiana Marketing Co. | 06–22–94 | G–S | 40,000 | N | I | 05–28–94 | Indef. |
| ST94–5781 | Texas Eastern Transmission Corp. | Enserch Gas Co | 06–22–94 | G–S | 145,261 | N | I | 06–01–94 | Indef. |
| ST94–5782 | Texas Eastern Transmission Corp. | Delhi Gas Marketing Corp. | 06–22–94 | G–S | 50,000 | N | I | 05–24–94 | 12–31–94 |
| ST94–5783 | Texas Eastern Transmission Corp. | Tristar Gas Co ... | 06–22–94 | G–S | 25,000 | N | I | 06–01–94 | 04–30–95 |
| ST94–5784 | Texas Eastern Transmission Corp. | Bay State Gas Co. | 06–22–94 | G–S | 35,571 | N | F | 06–01–94 | 10–31–12 |
| ST94–5785 | Northern Natural Gas Co. | NGC Transportation, Inc. | 06–22–94 | G–S | 25,000 | N | F | 05–17–94 | 09–30–94 |
| ST94–5786 | Northern Natural Gas Co. | Poco Petroleum Ltd. | 06–22–94 | G–S | 100,000 | N | I | 05–01–94 | Indef. |
| ST94–5787 | Northern Natural Gas Co. | Poco Petroleum Ltd. | 06–22–94 | G–S | 4,930 | N | F | 05–01–94 | 05–31–94 |
| ST94–5788 | Northern Natural Gas Co. | Cibola Corp ..... | 06–22–94 | G–S | 32,312 | N | F | 05–01–94 | 10–31–94 |
| ST94–5789 | Natural Gas P/L Co. of America. | USGT Energy Corp. | 06–21–94 | G–S | 80,000 | N | I | 05–04–94 | Indef. |
| ST94–5790 | Williams Natural Gas Co. | KN Gas Marketing, Inc. | 06–22–94 | G–S | 100,000 | N | I | 05–16–94 | 12–01–94 |
| ST94–5791 | Williams Natural Gas Co. | Boyd Rosene and Associates, Inc. | 06–22–94 | G–S | 5,000 | N | I | 05–16–94 | Indef. |
| ST94–5792 | Williams Natural Gas Co. | Boyd Rosene and Associates, Inc. | 06–22–94 | G–S | 5,000 | N | I | 05–16–94 | 09–30–98 |
| ST94–5793 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 3,500 | Y | I | 06–01–94 | Indef. |
| ST94–5794 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,000 | Y | I | 06–01–94 | Indef. |
| ST94–5795 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 20,000 | Y | I | 06–01–94 | Indef. |
| ST94–5796 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 13,340 | Y | I | 06–01–94 | Indef. |
| ST94–5797 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,783 | Y | I | 06–01–94 | Indef. |
| ST94–5798 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 246 | Y | I | 06–01–94 | Indef. |

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| ST94–5799 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 2,250 | Y | I | 06–01–94 | Indef. |
| ST94–5800 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 400 | Y | I | 06–01–94 | Indef. |
| ST94–5801 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,000 | Y | I | 06–01–94 | Indef. |
| ST94–5802 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,550 | Y | I | 06–01–94 | Indef. |
| ST94–5803 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 3,000 | Y | I | 06–01–94 | Indef. |
| ST94–5804 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 15,000 | Y | I | 06–01–94 | Indef. |
| ST94–5805 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 4,000 | Y | I | 06–01–94 | Indef. |
| ST94–5806 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,200 | Y | I | 06–01–94 | Indef. |
| ST94–5807 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 3,000 | Y | I | 06–01–94 | Indef. |
| ST94–5808 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 667 | Y | I | 06–01–94 | Indef. |
| ST94–5809 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 24,950 | Y | I | 06–01–94 | Indef. |
| ST94–5810 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,200 | Y | I | 06–01–94 | Indef. |
| ST94–5811 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 5,500 | Y | I | 06–01–94 | Indef. |
| ST94–5812 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 6,100 | Y | I | 06–01–94 | Indef. |
| ST94–5813 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 500 | Y | I | 06–01–94 | Indef. |
| ST94–5814 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 2,000 | Y | I | 06–01–94 | Indef. |
| ST94–5815 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 8,000 | Y | I | 06–01–94 | Indef. |
| ST94–5816 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 3,000 | Y | I | 06–01–94 | Indef. |
| ST94–5817 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 3,000 | Y | I | 06–01–94 | Indef. |
| ST94–5818 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 57 | Y | I | 06–01–94 | Indef. |
| ST94–5819 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 137 | Y | I | 06–01–94 | Indef. |
| ST94–5820 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 900 | Y | I | 06–01–94 | Indef. |
| ST94–5821 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 35,000 | Y | I | 06–01–94 | Indef. |
| ST94–5822 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 10,000 | Y | I | 06–01–94 | Indef. |

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| ST94–5823 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 2,000 | Y | I | 06–01–94 | Indef. |
| ST94–5824 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 425 | Y | I | 06–01–94 | Indef. |
| ST94–5825 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 6,500 | Y | I | 06–01–94 | Indef. |
| ST94–5826 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 20,600 | Y | I | 06–01–94 | Indef. |
| ST94–5827 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 47 | Y | I | 06–01–94 | Indef. |
| ST94–5828 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 40,000 | Y | I | 06–01–94 | Indef. |
| ST94–5829 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,100 | Y | I | 06–01–94 | Indef. |
| ST94–5830 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 52,500 | Y | I | 06–01–94 | Indef. |
| ST94–5831 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 81 | Y | I | 06–01–94 | Indef. |
| ST94–5832 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 30,000 | Y | I | 06–01–94 | Indef. |
| ST94–5833 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 2,000 | Y | I | 06–01–94 | Indef. |
| ST94–5834 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 500 | Y | I | 06–01–94 | Indef. |
| ST94–5835 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 06–22–94 | B | 1,800 | Y | I | 06–01–94 | Indef. |
| ST94–5836 | Valero Transmission, L.P. | Northern Natural Gas Co. | 06–23–94 | C | 38,000 | N | I | 05–20–94 | Indef. |
| ST94–5837 | Valero Transmission, L.P. | Trunkline Gas Co | 06–23–94 | C | 20,000 | N | I | 06–01–94 | Indef. |
| ST94–5838 | Trailblazer Pipeline Co. | Associated Natural Gas, Inc. | 06–23–94 | G–S | 40,000 | N | F | 06–01–94 | 07–31–94 |
| ST94–5839 | Stingray Pipeline Co. | Noble Gas Marketing, Inc. | 06–23–94 | G–S | 20,000 | N | I | 06–01–94 | Indef. |
| ST94–5840 | Natural Gas P/L Co. of America. | Dow Intrastate Gas Co. | 06–23–94 | B | 25,000 | N | F | 06–01–94 | 11–30–97 |
| ST94–5841 | Koch Gateway Pipeline Co. | Pennzoil Gas Marketing Co. | 06–23–94 | G–S | 105,000 | N | F | 05–26–94 | Indef. |
| ST94–5842 | Koch Gateway Pipeline Co. | Polaris Enterprises, Inc. | 06–23–94 | G–S | N/A | N | I | 06–01–94 | Indef. |
| ST94–5843 | Koch Gateway Pipeline Co. | Midcon Gas Services Corp. | 06–23–94 | G–S | 27,000 | N | F | 06–01–94 | 06–01–95 |
| ST94–5844 | Koch Gateway Pipeline Co. | Koch Gas Services Co. | 06–23–94 | G–S | N/A | Y | I | 05–25–94 | Indef. |
| ST94–5845 | Red River Pipeline Co. | Natural Gas P/L Co. of America. | 06–24–94 | C | 10,000 | N | I | 03–01–94 | Indef. |
| ST94–5846 | Westar Transmission Co. | Northern Natural Gas Co. | 06–24–94 | C | 2,000 | N | I | 02–01–94 | Indef. |
| ST94–5847 | Westar Transmission Co. | Red River Pipeline Company, L.P. | 06–24–94 | C | 10,000 | N | I | 03–01–94 | Indef. |
| ST94–5848 | Westar Transmission Co. | Natural Gas P/L Co. of America. | 06–24–94 | C | 10,000 | N | I | 02–01–94 | Indef. |
| ST94–5849 | Westar Transmission Co. | Northern Natural Gas Co. | 06–24–94 | C | 10,000 | N | I | 01–01–94 | Indef. |
| ST94–5850 | Westar Transmission Co. | El Paso Natural Gas Co. | 06–24–94 | C | 2,000 | N | I | 02–01–94 | Indef. |
| ST94–5851 | Westar Transmission Co. | Northern Natural Gas Co. | 06–24–94 | C | 20,000 | N | I | 03–01–94 | Indef. |

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5852 | Natural Gas P/L Co. of America. | Consolidated Fuel Corp. | 06–24–94 | G–S | 1,000 | N | F | 06–01–94 | 11–30–00 |
| ST94–5853 | Noram Gas Transmission Co. | Noble Gas Marketing, Inc. | 06–24–94 | G–S | 150,000 | N | I | 06–01–94 | Indef. |
| ST94–5854 | Noram Gas Transmission Co. | Aptian Energy Services. | 06–24–94 | G–S | 50,000 | N | I | 06–01–94 | Indef. |
| ST94–5855 | Colorado Interstate Gas Co. | Thermo Cogeneration Part., L.P. | 06–23–94 | G–S | 5,995 | N | I | 06–14–94 | Indef. |
| ST94–5856 | Colorado Interstate Gas Co. | U.S. Gas Transportation, Inc. | 06–23–94 | G–S | 17,652 | N | I | 06–15–94 | Indef. |
| ST94–5857 | Texas Gas Transmission Corp. | NGC Transportation, Inc. | 06–24–94 | G–S | 200,000 | N | I | 06–16–94 | Indef. |
| ST94–5858 | Texas Gas Transmission Corp. | Union Oil Company of California. | 06–24–94 | G–S | 70,000 | N | I | 06–17–94 | Indef. |
| ST94–5859 | CNG Transmission Corp. | Transcontinental Gas P/L Corp. | 06–27–94 | G–S | 300,000 | N | I | 05–31–94 | 07–31–94 |
| ST94–5860 | CNG Transmission Corp. | Cenergy, Inc. | 06–27–94 | G–S | 30,000 | N | I | 06–01–94 | Indef. |
| ST94–5861 | Trunkline Gas Co | Noble Gas Marketing, Inc. | 06–27–94 | G–S | 2,000 | N | I | 06–01–94 | Indef. |
| ST94–5862 | Trunkline Gas Co | Noble Gas Marketing, Inc. | 06–27–94 | G–S | 10,000 | N | I | 06–02–94 | Indef. |
| ST94–5863 | Trunkline Gas Co | Diamond Shamrock Offshore Partners. | 06–27–94 | G–S | 6,000 | N | I | 06–03–94 | Indef. |
| ST94–5864 | Midwestern Gas Transmission Co. | H & N Gas, Ltd .. | 06–27–94 | G–S | 12,157 | N | F | 06–01–94 | Indef. |
| ST94–5865 | Questar Pipeline Co. | Bonneville Fuels Marketing Corp. | 06–27–94 | G–S | 300 | N | F | 06–18–94 | 09–30–94 |
| ST94–5866 | Mississippi River Trans. Corp. | Sunbelt Oil Field Service, Inc. | 06–27–94 | G–S | 5,000 | N | I | 05–27–94 | Indef. |
| ST94–5867 | Acadian Gas Pipeline System. | ANR Pipeline Co., et al. | 06–27–94 | C | 15,000 | N | I | 06–14–94 | Indef. |
| ST94–5868 | Valero Transmission, L.P. | Northern Natural Gas Co. | 06–24–94 | C | 10,000 | N | I | 05–28–94 | Indef. |
| ST94–5869 | Enogex Inc. | Natural Gas P/L Co. of America. | 06–28–94 | C | 50,000 | N | I | 06–02–94 | Indef. |
| ST94–5870 | ONG Transmission Co. | Caprock Pipeline Co. | 06–27–94 | C | 50,000 | N | I | 06–09–94 | Indef. |
| ST94–5871 | ONG Transmission Co. | Natural Gas P/L Co. of America. | 06–27–94 | C | 50,000 | N | I | 06–10–94 | Indef. |
| ST94–5872 | ONG Transmission Co. | Noram Energy Services. | 06–27–94 | C | 20,000 | N | I | 05–27–94 | Indef. |
| ST94–5873 | Tennessee Gas Pipeline Co. | City of Sheffield . | 06–28–94 | G–S | 5,299 | N | F | 06–01–94 | Indef. |
| ST94–5874 | Midwestern Gas Transmission Co. | Associated Natural Gas Inc. | 06–28–94 | G–S | 20,000 | N | F | 06–04–94 | Indef. |
| ST94–5875 | Tennessee Gas Pipeline Co. | Tarpon Gas Marketing, Ltd. | 06–28–94 | G–S | 9,000 | N | I | 06–06–94 | Indef. |
| ST94–5876 | Transwestern Pipeline Co. | Clayton Williams Energy, Inc. | 06–28–94 | G–S | 2,030 | N | F | 06–01–94 | 06–30–04 |
| ST94–5877 | Transwestern Pipeline Co. | Enogex Services Corp. | 06–28–94 | G–S | 3,000 | N | F | 06–01–94 | 06–30–94 |
| ST94–5878 | Transwestern Pipeline Co. | Tristar Gas Marketing Co. | 06–28–94 | G–S | 80,000 | N | F | 06–16–94 | 06–30–94 |
| ST94–5879 | Transwestern Pipeline Co. | Tristar Marketing Co. | 06–28–94 | G–S | 10,000 | N | F | 06–16–94 | 06–30–94 |
| ST94–5880 | Transwestern Pipeline Co. | Clayton Williams Energy, Inc. | 06–28–94 | G–S | 1,240 | N | F | 05–01–94 | 05–31–94 |
| ST94–5881 | Transwestern Pipeline Co. | Enron Gas Marketing, Inc. | 06–28–94 | G–S | 22,500 | N | A | 06–17–94 | 06–30–94 |
| ST94–5882 | Transwestern Pipeline Co. | U.S. Gas Transportation, Inc. | 06–28–94 | G–S | 20,000 | N | F | 06–17–94 | 06–30–94 |

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5883 | Transwestern Pipeline Co. | Bridge Gas U.S.A. | 06–28–94 | G–S | 10,000 | N | F | 06–19–94 | 06–21–94 |
| ST94–5884 | Transwestern Pipeline Co. | Brooklyn Interstate Nat. Gas Corp. | 06–28–94 | G–S | 2,096 | N | F | 06–22–94 | 06–30–94 |
| ST94–5885 | Transwestern Pipeline Co. | Bridge Gas U.S.A. | 06–28–94 | G–S | 10,000 | N | F | 06–22–94 | 06–24–94 |
| ST94–5886 | Transwestern Pipeline Co. | U.S. Gas Transportation, Inc. | 06–28–94 | G–S | 20,000 | N | F | 06–22–94 | 06–22–94 |
| ST94–5887 | Natural Gas P/L Co. of America. | Noble Gas Marketing, Inc. | 06–28–94 | G–S | 50,000 | N | I | 06–09–94 | Indef. |
| ST94–5888 | Gasdel Pipeline System Inc. | Hunt Petroleum Corp. | 06–28–94 | G–S | 3,850 | N | I | 10–01–94 | Indef. |
| ST94–5889 | Winnie Pipeline Co. | Florida Gas Transmission Co. | 06–28–94 | C | 100,000 | N | I | 05–06–94 | Indef. |
| ST94–5890 | ONG Transmission Co. | Noram Energy Services. | 06–29–94 | C | 50,000 | N | I | 05–06–94 | Indef. |
| ST94–5891 | ONG Transmission Co. | Noram Energy Services. | 06–29–94 | C | 50,000 | N | I | 05–23–94 | Indef. |
| ST94–5892 | ONG Transmission Co. | Natural Gas P/L Co. of America. | 06–29–94 | C | 50,000 | N | I | 05–06–94 | Indef. |
| ST94–5893 | Algonquin Gas Transmission Co. | Boston Gas Co .. | 06–29–94 | G–S | 10,639 | N | I | 01–26–94 | Indef. |
| ST94–5894 | Southern California Gas Co. | Vastar Gas Marketing, Inc. | 06–29–94 | G–LT | 10,000 | N | I | 06–01–94 | 06–03–94 |
| ST94–5895 | Southern California Gas Co. | Tristar Gas Marketing Co. | 06–29–94 | G–LT | 20,000 | N | I | 06–08–94 | 06–11–94 |
| ST94–5896 | Northern Illinois Gas Co. | ANR Pipeline Co., et al. | 06–29–94 | G–HT | 10,000 | N | I | 06–01–94 | 06–30–94 |
| ST94–5897 | Northern Illinois Gas Co. | ANR Pipeline Co., et al. | 06–29–94 | G–HT | 4,155 | N | I | 06–01–94 | 06–30–94 |
| ST94–5898 | Northern Illinois Gas Co. | ANR Pipeline Co., et al. | 06–29–94 | G–HT | 10,000 | N | I | 06–01–94 | 06–15–94 |
| ST94–5899 | Northern Illinois Gas Co. | ANR Pipeline Co., et al. | 06–29–94 | G–HT | 50,000 | N | I | 05–01–94 | 06–10–94 |
| ST94–5900 | Transok, Inc ..... | ANR Pipeline Co., et al. | 06–29–94 | C | 60,000 | N | I | 06–01–94 | Indef. |
| ST94–5901 | Delhi Gas Pipeline Corp. | ANR Pipeline Co., et al. | 06–29–94 | C | 15,000 | N | I | 06–02–94 | Indef. |
| ST94–5903 | Columbia Gas Transmission Corp. | Conoco, Inc ..... | 06–29–94 | G–S | 1,290 | N | F | 06–01–94 | 08–31–94 |
| ST94–5904 | Columbia Gas Transmission Corp. | Conoco, Inc ..... | 06–29–94 | G–S | 2,500 | N | F | 06–01–94 | 10–31–94 |
| ST94–5905 | K N Wattenberg Transmission LLC. | Associated Natural Gas, Inc. | 06–30–94 | G–S | 10,000 | N | I | 06–04–94 | Indef. |
| ST94–5906 | Panhandle Eastern Pipe Line Co. | Centana Gathering Co. | 06–30–94 | G–S | 50,000 | N | I | 06–01–94 | 12–01–98 |
| ST94–5907 | Panhandle Eastern Pipe Line Co. | Centana Gathering Co. | 06–30–94 | G–S | 50,000 | N | I | 06–01–94 | 12–01–98 |
| ST94–5908 | Panhandle Eastern Pipe Line Co. | Mercado Gas Services. | 06–30–94 | G–S | 1,000 | N | I | 06–31–94 | 04–30–99 |
| ST94–5909 | Panhandle Eastern Pipe Line Co. | Enron Gas Marketing, Inc. | 06–30–94 | G–S | 10,000 | N | F | 06–01–94 | 11–30–94 |
| ST94–5910 | Panhandle Eastern Pipe Line Co. | Coastal Gas Marketing Co. | 06–30–94 | G–S | 3,500 | N | F | 06–01–94 | 10–31–94 |
| ST94–5911 | Panhandle Eastern Pipe Line Co. | Tri-Power Fuels, Inc. | 06–30–94 | G–S | 3,000 | N | F | 06–01–94 | 10–31–94 |
| ST94–5912 | Panhandle Eastern Pipe Line Co. | Ward Gas Services, Inc. | 06–30–94 | G–S | 15,234 | N | I | 06–01–94 | 03–31–95 |

| Docket No.[1] | Transportation/ seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST94–5913 | Panhandle Eastern Pipe Line Co. | Semco Energy Services, Inc. | 06–30–94 | G–S | 12,000 | N | F | 06–01–94 | 07–31–94 |
| ST94–5914 | Panhandle Eastern Pipe Line Co. | Centana Gathering Co. | 06–30–94 | G–S | 60,000 | N | I | 06–01–94 | 05–31–99 |
| ST94–5915 | Northern Natural Gas Co. | GPM Gas Corp .. | 06–30–94 | G–S | 10,000 | N | F | 06–01–94 | 06–30–94 |
| ST94–5916 | Northern Natural Gas Co. | Midland Marketing Corp. | 06–30–94 | G–S | 15,000 | N | I | 06–01–94 | Indef. |
| ST94–5917 | Northern Natural Gas Co. | NGC Transportation, Inc. | 06–30–94 | G–S | 4,058 | N | F | 06–01–94 | 06–30–94 |
| ST94–5918 | Northern Natural Gas Co. | Western Gas Marketing, Inc. | 06–30–94 | G–S | 5,096 | N | F | 06–01–94 | 06–30–94 |
| ST94–5919 | Iroquois Gas Transmission System. | Tristar Gas Co ... | 06–30–94 | G–S | 90,000 | N | I | 06–15–94 | Indef. |
| ST94–5920 | Columbia Gas Transmission Corp. | Indeck Olean Limited Partnership. | 06–30–94 | G–S | N/A | N | N/A | 06–20–94 | Indef. |
| ST94–5921 | Texas Eastern Transmission Corp. | Arkla–Beebe & Cabot AR. | 06–30–94 | G–S | 5,987 | N | F | 06–01–94 | 10–31–12 |
| ST94–5922 | El Paso Natural Gas Co. | NGC Transportation, Inc. | 06–30–94 | G–S | 103,000 | N | I | 06–16–94 | Indef. |
| ST94–5923 | El Paso Natural Gas Co. | Hadson Gas Systems, Inc. | 06–30–94 | G–S | 25,000 | N | I | 06–01–94 | Indef. |
| ST94–5924 | Valero Transmission, L.P. | El Paso Natural Gas Co. | 06–30–94 | C | 10,000 | N | I | 06–01–94 | Indef. |
| ST94–5925 | Valero Transmission, L.P. | Tennessee Gas Pipeline Co. | 06–30–94 | C | 2,900 | N | I | 06–01–94 | Indef. |
| ST94–5926 | Valero Transmission, L.P. | Natural Gas P/L Co. of America. | 06–30–94 | C | 40,000 | N | I | 06–01–94 | Indef. |
| ST94–5927 | Valero Transmission, L.P. | El Paso Natural Gas Co. | 06–30–94 | C | 10,000 | N | I | 06–01–94 | Indef. |
| ST94–5928 | Valero Transmission, L.P. | Trunkline Gas Co | 06–30–94 | C | 30,000 | N | I | 06–01–94 | Indef. |
| ST94–5929 | Natural Gas P/L Co. of America. | Industrial Energy Applications, Inc. | 06–30–94 | G–S | 2,500 | N | F | 06–01–94 | 05–31–95 |
| ST94–5930 | Natural Gas P/L Co. of America. | Industrial Energy Applications, Inc. | 06–30–94 | G–S | 3,148 | N | F | 06–01–94 | 10–31–97 |
| ST94–5931 | Natural Gas P/L Co. of America. | Enron Gas Marketing, Inc. | 06–30–94 | G–S | 20,000 | N | F | 06–01–94 | 03–31–95 |
| ST94–5932 | Channel Industries Gas Co. | Eastex Hydrocarbons, Inc. | 06–30–94 | G–I | 25,000 | N | I | 06–01–94 | Indef. |

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, and "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–20480 Filed 8–19–94; 8:45 am]
BILLING CODE 6717–01–P

**[Docket No. CP94–702–000, et al.]**

## Texas Gas Transmission Corp, et al.; Natural Gas Certificate Filings

August 11, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Texas Gas Transmission

[Docket No. CP94–702–000]

Take notice that on August 8, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–702–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to add a new delivery point in Grant Parish, Louisiana, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas currently transports gas for delivery to Farmland Industries, Inc. (Farmland) at a meter located on Texas Gas's Bastrop—Eunice pipeline system in Grant Parish, Louisiana (Wintershall—Farmland Meter). Such meter was installed and is being operated under the authority of Section 311 of the Natural Gas Policy Act (Section 311) and Section 284.3(c) of the Commission's Regulations. Texas Gas states that Farmland has recently indicated a need for greater flexibility in the services that can be provided at this delivery point on Texas Gas's system. In particular, Farmland would like to be

able to receive at the Wintershall—Farmland Meter gas transported not only pursuant to Section 311, but also pursuant to Texas Gas's blanket certificate issued in Docket No. CP88–686–000. By this filing, Texas Gas is requesting authorization to change the status of this delivery point in order to be able to transport and deliver gas on a jurisdictional basis.

Texas Gas states that the quantity of gas to be delivered through this meter will vary; however, the design capacity of the Wintershall—Farmland Meter is approximately 78,200 Mcf per day under normal operating conditions.

Texas Gas states that this proposal will have no impact on its peak day and annual deliveries as the addition of this point as a jurisdictional delivery station will not increase or decrease Texas Gas's main line capacity.

*Comment date:* September 26, 1994, in accordance with Standard Paragraph G at the end of this notice.

**2. NorAm Gas Transmission Company**

[Docket No. CP94–706–000]

Take notice that on August 8, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–706–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities in Louisiana and Oklahoma under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon in place: 1) Line 632 having 30,071 feet of 2 to 6-inch pipe located in Pontotoc County, Oklahoma; 2) Line 632–12 having 4,421 feet of 2-inch pipe located in Pontotoc County, Oklahoma; and 3) a segment of Line 634 having 18,648 feet of 2 to 6-inch pipe located in Pontotoc County, Oklahoma. All lines are operated at low pressure to provide service to rural domestic customers of ARKLA, a division of NorAm Energy Corporation (formerly Arkansas Louisiana Gas Company) and ARKLA's Ada Townborder Station No. 2. NGT says that these lines are old, deteriorated, and are no longer necessary for the delivery of gas to ARKLA. NGT proposes to transfer, by sale, minor segments of these lines to ARKLA. No customers or service will be abandoned as a result of the abandonment of these facilities.

*Comment date:* September 26, 1994, in accordance with Standard Paragraph G at the end of this notice.

**3. Northern Natural Gas Company**

[Docket No. CP94–708–000]

Take notice that on August 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–708–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point and to upgrade an existing delivery point to accommodate increased natural gas deliveries to Madison Gas and Electric Company (MG&E) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a new delivery point, the Readstown #1 town border station (TBS), in Vernon County, Wisconsin, to serve the communities of Readstown, Soldiers Grove, Gays Mills, Bell Center, and Mount Sterling (communities that do not currently have natural gas service) and to upgrade the existing Elroy #1 town border station in Juneau County, Wisconsin, to accommodate increased natural gas deliveries to serve the communities of Wilton and Norwalk. Northern explains that MG&E has requested the installation and upgrade of the delivery points due to the expansion of its distribution system into new areas. Northern estimates that the total cost would be $138,000.

Northern estimates that the peak day and annual deliveries of gas at the Readstown TBS would be 1,461 and 150,000 MMBtu, respectively. Furthermore, Northern estimates that the peak day and annual deliveries at the Elroy TBS would increase from 889 to 2,250 MMBtu and from 100,000 to 300,000 MMBtu, respectively. Northern states that the end-users would be residential, commercial, and industrial customers. Northern advises that the increased service would be provided under currently effective transportation service agreements.

*Comment date:* September 26, 1994, in accordance with Standard Paragraph G at the end of this notice.

**4. Northern Natural Gas Company**

[Docket No. CP94–710–000]

Take notice that on August 10, 1994, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–710–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a town border station and appurtenant facilities to provide natural gas deliveries to Superior Water, Light and Power Company (SWL&P), under the blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a town border station and appurtenant facilities in Douglas County, Wisconsin to accommodate increased natural gas deliveries to SWL&P for redelivery at Hawthorne, Wisconsin for commercial and residential end use. Northern indicates that it would deliver 800 Mcf on a peak day and 160,000 Mcf annually through the new town border station. Northern estimates that the facilities would cost $130,000, and indicates that the facilities would be financed in accordance with the terms and conditions set forth in Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the total volumes to be delivered to SWL&P after this request do not exceed the total volumes authorized prior to this request. Northern also states that it has sufficient system delivery flexibility to accomplish these deliveries without detriment or disadvantage to its other customers. It is also stated that Northern's tariff does not prohibit the addition of new delivery taps.

*Comment date:* September 26, 1994, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraph**

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20483 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. RP92–237–014]**

## Alabama-Tennessee Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 1994.

Take notice that on August 10, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of September 1, 1994:

Sub. Fifth Revised Sheet No. 4

On August 9, 1994, pursuant to the settlement approved by the Commission in its December 30, 1993, Letter Order in this proceeding, Alabama-Tennessee filed a tariff sheet which inadvertently contained an incorrect effective date of October 1, 1994. Consistent with the intent of Alabama-Tennessee's August 9, filing Alabama-Tennessee's revised tariff sheet filed herein contains the proper effective date of September 1, 1994.

Alabama-Tennessee has requested such waiver of the Commission's regulations as may be necessary to accept and approve its filing as proposed.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20493 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94–362–000]**

## Black Marlin Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 1994.

Take notice that on August 12, 1994, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of Black Marlin's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to be effective September 1, 1994:

First Revised Sheet No. 314

Black Marlin states that in conjunction with its implementation of Order 636 and in compliance with the Commission's order dated October 14, 1993, in Docket No. RS92–56–002, Black Marlin filed its form of Electronic Bulletin Board Subscriber Agreement (Subscriber Agreement) to become part of its FERC Gas Tariff, First Revised Volume No. 1. Paragraph 3 of the Subscriber Agreement provides that EBB Customers will reimburse Black Marlin $135.61 plus applicable taxes for licensing charges Black Marlin incurs to provide service. The licensing fees incurred by Black Marlin for new customers have risen to $157.42 plus applicable taxes and will continue to change periodically.

Black Marlin states that it is filing herein to remove the fixed dollar amount from the form of Subscriber Agreement in its tariff. Black Marlin states that it will continue to charge new EBB Customers only the actual charges incurred by Black Marlin on their behalf, with no administrative or handling fees or other forms of consideration. The change proposed herein will eliminate the need for a tariff filing each time the licensing fees are changed.

Black Marlin requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary, specifically (but not limited to) Section 154.22 of the Commission's Regulations, so as to permit the tariff sheets submitted herewith to become effective September f1, 1994.

Black Marlin further states that copies of the filing have been mailed to each of its customers affected by this filing and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 23, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20489 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94–361–000]**

## Black Marlin Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 1994.

Take notice that on August 12, 1994, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of Black Marlin's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to be effective September 1, 1994:

Second Revised Sheet No. 212
Second Revised Sheet No. 213

Black Marlin states that in Order No. 636, et seq. the Commission permitted pipelines to allocate capacity on the basis of economic value to shippers rather than on a first-come, first-served basis which had been established as the standard under Order No. 436. Virtually all pipelines now schedule and curtail interruptible capacity based on the price, or rate, being paid for such capacity with a pro rata allocation, if necessary, among shippers paying the same price.

Although Black Marlin is not a capacity constrained pipeline and scheduling and curtailment priorities have not been issues in the Black Marlin proceedings, Black Marlin states that it is filing herein to change and clarify the operation of the scheduling and curtailment provisions of its tariff. The currently effective Section 9, Scheduling and Curtailment, of the General Terms and Conditions (GTC) of Black Marlin's FERC Gas Tariff, First Revised Volume No. 1 provides that scheduling and curtailment will be based on the rate being paid for capacity within each scheduling and curtailment category. However, this Section also retains language regarding the first-come, first-served basis and priority dates which were originally established pursuant to Order No. 436.

Black Marlin states that it is filing herein to eliminate language regarding the first-come, first-served methodology and priority dates so that it is clear that

scheduling and curtailment, within each scheduling and/or curtailment category, on Black Marlin is done by price, and pro rata at each price level.

Black Marlin requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary, specifically (but not limited to) Section 154.22 of the Commission's Regulations, so as to permit the tariff sheets submitted herewith to become effective September 1, 1994.

Black Marlin further states that copies of the filing have been mailed to each of its customers affected by this filing and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 23, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20492 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94–162–000]**

## High Island Offshore System; Notice of Informal Settlement Conference

August 16, 1994.

Take notice that an informal settlement conference will be convened in this proceeding August 23, 1994, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N E., Washington, DC, for the purposes of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Kathleen Dias at (202) 208–0524 or Anja Clark at (202) 208–2034.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20491 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER94–1426–000]**

## Madison Gas and Electric Co.; Notice of Filing

August 16, 1994.

Take notice that on August 11, 1994, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission revisions to its Power Sales Tariff. MGE respectfully requests an effective date of September 1, 1994.

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20487 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER94–1448–000]**

## Northeast Empire L.P. #2; Notice of Filing

August 16, 1994.

Take notice that on August 9, 1994, Northeast Empire L.P. #2 tendered for filing an amendment to its July 6, 1994, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20496 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ES94–34–000]**

## Pennsylvania Power & Light Co.; Notice of Application

August 16, 1994.

Take notice that on August 11, 1994, Pennsylvania Power & Light Company filed an application under § 204 of the Federal Power Act seeking authority to issue up to $500 million of unsecured promissory notes and other evidences of unsecured indebtedness, maturity in less than one year from the date of issuance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20495 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. PR94–16–000]**

## Southern California Gas Co., Notice Postponing Technical Conference

August 16, 1994.

Take notice that the technical conference scheduled for Thursday, September 1, 1994, by a notice issued August 5, 1994, in the above-captioned proceeding, has been postponed until Tuesday, September 13, 1994. The

conference will convene at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. The date of the conference has been revised due to a scheduling conflict.

All interested persons and Staff are permitted to attend the conference.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20494 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. TM94–4–17–003 and TM94–5–17–001]**

## Texas Eastern Transmission Corporation; Compliance Filing

August 16, 1994.

Take notice that on August 12, 1994, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing additional information required by the Commission in its July 29, 1994, orders in Docket No. TM94–4–17–001 and Docket No. TM94–5–17–000, which consist of Texas Eastern's February 1, 1994, and August 1, 1994, Electric Power Cost tracker filings, respectively.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20488 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94–302–001]**

## Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 1994.

Take notice that on August 12, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 1994:

Substitute Original Sheet No. 231A
Substitute Original Sheet No. 231B
Substitute Original Sheet No. 231C

Texas Gas that the tariff sheets are being filed to comply with a Commission Order issued on July 29, 1994. The Order Accepted Tariff Sheets Subject to Conditions, which established provisions for final resolution of pre-Order No. 636 historical imbalances on the Texas Gas system. Texas Gas further states that the instant filing is made to modify the tariff sheets as directed by the Commission's Order.

Texas Gas states that copies of the tariff sheets are being mailed to Texas Gas' affected customers, interested state commissions, and those names appearing on the service list in Docket No. RP94–302–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20490 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP94–714–000]**

## Transcontinental Gas Pipe Line Corp.; Notice of Application

August 16, 1994.

Take notice that on August 15, 1994, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP94–714–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for (1) a certificate of public convenience and necessity authorizing certain river crossings, and (2) an order permitting and approving the abandonment of existing facilities at the same location, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it has three pipelines which cross the Amite River in Louisiana: (1) 30-inch diameter Main Line A, (2) 36-inch diameter Main Line B and (3) 36-inch Maine Line C. Transco states that all gas produced onshore and offshore Texas and Louisiana which flows through Transco's system to Transco's markets in the deep south, atlantic seaboard and eastern markets flows through the Amite River crossing (with the exception of the gas attached to Transco's mainline by way of the Southeast Louisiana Gathering System, which interconnects with Transco's mainline at Compressor Station No. 65, located approximately 11 miles north of the Amite River).

Transco states that because of river scouring, bank washing and channel meander/realignment, Main Line A is exposed. It is indicated that Line A has been taken out of service because Transco is concerned that a significant flood event could occur and rupture the line. It is also indicated that Main Lines B and C are not yet exposed, but Transco is concerned that they would become exposed because the river is realigning in a southward direction.

Transco states that it cannot perform these replacements pursuant to Section 2.55(b) of the Commission's Regulations because of the Commission's recent clarification of Section 2.55(b) in the order issued on May 12, 1994, in *Arkla Energy Resources Company*, Docket No. CP91–2069–000 (67 FERC ¶ 61,173), involving the issue of replacements outside of existing right-of-way. Transco states that it is imperative that it complete the new crossings in time to provide service during the upcoming winter heating season.

Transco states that it proposes to install approximately 2,700 feet of new 36-inch diameter Main Line B by horizontal directional drilling under the Amite River, at the location of its existing pipeline crossing of the Amite River. Transco indicates that directionally drilled pipeline are more secure than the older pipelines which were installed by way of trenching the river bed. It is stated that approximately 225 feet of 36-inch diameter pipe would be conventionally installed from the entrance of the bore on the east side of the river and tied in to existing Main Lines A and B by means of a new manifold. It is also indicated that approximately 225 feet of 36-inch diameter pipe would be conventionally installed from the exit of the bore on the west bank of the river and tied into existing Main Lines A and B by means of a new manifold.

Transco states that it also proposes to install approximately 2,700 feet of new

36-inch diameter Main Line C by horizontal directional drilling under the Amite River. It is indicated that approximately 225 feet of 36-inch diameter pipe will be conventionally installed from the entrance of the bore on the east side of the river and tied into existing Main Line Lines A, B, and C by means of the manifold mentioned above. It is also stated that approximately 225 feet of 36-inch diameter pipe would be conventionally installed from the exit of the bore on the west side of the river and tied into Main Lines A, B, and C by means of the manifold mentioned above.

Transco states that proposed replacements would restore the long-term integrity of Transco's transmission system at the Amite River crossings. It is stated that system capacity across the Amite River after installation of the two new river crossings would be 2,361,000 Mcf per day compared with a current capacity of 2,369,000 Mcf per day. Transco states that the three existing pipelines would be retired and removed. Transco estimates the cost of installing both new lines at approximately $6,000,000, to be financed initially through short-term loans and funds on hand, with permanent financing to be undertaken at a later date. Transco estimates the cost of the removal work at $280,000.

Transco states that issuance of a certificate and construction clearance by September 15, 1994, is justified for three reasons: (1) The need for security of gas service during the upcoming winter heating season, (2) historically, during the months of August and September, it is expected that the Amite River floodplain would be dryer than at any time of the year, and thus provide the most favorable conditions for the contractor's equipment, and (3) the *de minimis* impact on the environment of the crossing project.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1994, file with the Federal Energy Regulatory Commission Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–20486 Filed 8–19–94; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5053–3]**

### 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 September 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Prevention, Pesticides and Toxic Substances

*Title:* Data Acquisition for the Registration of Pesticide Products (EPA ICR No.: 1503.02). This is a request for extension of the expiration date of a currently approved collection.

*Abstract:* Under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide registrants are required to report to EPA and keep records of data from studies relative to the pesticides which are currently registered under FIFRA. Registrants, upon request, must submit to EPA reports of additional data necessary to maintain a current registration of pesticides. The Agency uses the information to assess whether the subject pesticide causes an unreasonable adverse effect on human health and the environment and to determine whether to maintain the registration.

*Burden Statement:* The burden for this collection of information is estimated to average 6,927 hours per response for reporting, and 3 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

*Respondents:* Pesticide Registrants.

*Estimated No. of Respondents:* 30.

*Estimated No. of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 208,898 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 16, 1994.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 94–20550 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–F

**[FRL–5040–6]**

### 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 September 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of the Administrator**

*Title:* Information Collection Request (ICR) for Customer Satisfaction Surveys (EPA ICR No. 1711.01).

*Abstract:* This is a new information collection request seeking generic clearance for EPA customer surveys, in accordance with the objectives of Executive Order (E.O.) 12862 "Setting Customer Standards" (September 11, 1993). The E.O. states that "...Federal agencies shall take steps to survey their customers for the purposes of determining the kind and quality of services they want and measure the level of satisfaction with existing services." A subsequent OMB memorandum to Federal agencies (September 29, 1993) encourages agencies to seek generic clearance through OMB for information collection activities associated with customer surveys. This ICR fulfills the EPA's obligations under the E.O. by providing an efficient, expedited clearance process within the EPA for customer surveys.

EPA services (such as hotlines, information clearinghouses, public affairs offices) conducting customer service surveys may request their customers to provide: (1) Identification information; and (2) opinion information related to the quality, timeliness and value of their service. The EPA may gather this information through mail or telephone questionnaires, or through focus interviews with selected customers. In addition, EPA programs that provide materials (software, guidance documents, manuals, brochures) to the public may seek customer feedback through short self-addressed customer feedback forms on distributed materials.

The information will be used by the EPA to establish a baseline of information for developing strategies to improve Agency services, and as a yardstick for measuring the success of these strategies over time.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 20 minutes for mail surveys, 10 minutes for customer feedback forms, 15 minutes for telephone surveys, and 2 hours for focus sessions, for an average burden of 15 minutes per response including time for reviewing instructions, gathering and compiling the information, and completing and reviewing the response.

*Respondents:* Individuals or entities that are directly served by EPA service organizations.

*Estimated Number of Respondents:* 65,766.

*Estimated Number of Responses per Respondent:* 1.

*Frequency of Collection:* One time.

*Estimated Total Annual Burden on Respondents:* 16,430 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 (2136), 401 M Street, SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 16, 1994.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 94–20554 Filed 8–19–94; 8:45 am]

**BILLING CODE 6560–50–F**

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**Office of the Federal Environmental Executive**

**[FRL–5054–1]**

## Availability of the Presidential Memorandum for the Heads of Executive Departments and Agencies on Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds

**AGENCY:** Office of the Federal Environmental Executive, EPA.

**ACTION:** Notice, Review & Comment.

**SUMMARY:** On April 26, 1994, President Clinton signed a Memorandum for the Heads of Executive Departments and Agencies encouraging Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds.

The Memorandum calls for the establishment of an interagency work group by the Federal Environmental Executive to recommend guidance to all Federal agencies in the implementation of the Memorandum. This notice and request for comment is provided at the request of the Federal Environmental Executive in order to provide for the maximum amount of public input into the guidance.

**DATES:** Written comments on the suggested guidelines for the implementation of the Presidential Memorandum should be received on or before September 16, 1994.

**ADDRESSES:** Persons wishing to comment on the guidelines to implement this Presidential Memorandum should submit their comments to The Office of the Federal Environmental Executive; Mail Code: 1600; Washington, DC 20460.

**FOR FURTHER INFORMATION:** Contact Debra Yap (202) 260–9291.

**SUPPLEMENTARY INFORMATION:**

"Reinventing Environmental Management" an Accompanying Report of the National Performance Review (NPR), clearly makes the case that the Federal government's daily operation—how it manages the lands, buildings, and other facilities that it owns or operates, has a significant impact on the environment.

The National Performance Review recommended that the President issue a directive to require the use of environmentally and economically beneficial landscaping for Federal lands and facilities and federally funded projects. The NPR called upon the directive to increase the use of native plant species and to reduce the amount of chemicals applied to Federal landscapes. The NPR also called for the use of water efficient technologies in Federal landscaping projects; to provide educational and conservation opportunities to the public and to establish a government wide environmentally sound landscape program.

In response to the NPR, on April 26, 1994, President Clinton signed a Presidential Memorandum. The Memorandum called for the establishment of guidelines for Federal facility managers on how to increase the use of native species, reduce the use of chemical fertilizers and pesticides, and implement water conservation techniques. Those guidelines will be proposed by a Federal Inter-Agency workgroup established by the Federal Environmental Executive. The purpose of this notice is to request input from interested parties on factors that should be included in the guidance. This notice provides a brief discussion of the particular sections of the Memorandum and issues which will be considered when the guidance is proposed. The guidelines should allow for climatic and geographic differences, and should provide a framework for agencies to consider as they plan their landscape requirements.

The Landscape Memorandum identifies five (5) priorities. Each of these have raised questions.

*(a) Use Regionally Native Plants*

*Intent:* to incorporate native plants wherever practicable into landscape projects.

*Discussion:* The use of native plants is encouraged because regionally native plants are believed to be regionally adapted to environmental conditions, i.e. soils, precipitation, light, extreme cold or heat, etc. By planting native plants we are using plants that are therefore more hardy and more likely to be self-reliant than non-native alternatives.

*Concerns:* (1) What is a native plant? Executive Order 11987 on Exotic Organisms, signed by President Carter on May 24, 1977, used the following definition: "all species of plants (and animals) naturally occurring, either presently or historically, in any ecosystem in the United States." It has been suggested that the word "presently" be eliminated from the definition, so as to avoid naturalized plants from being considered native. An alternative definition could be: "all species, indigenous to, or known to exist in a region at the time of European settlement."

(2) Do commercial sources of native plants and seed exist to meet this new demand? It is believed that a substantial group of native plant and seed sources exists in the Midwest, Southwest and Southeast regions. However, other regions cannot meet the new demand. How can we develop more sources for native plants and seeds?

(3) Does the public understand the use of native plants enough to support this project? Can the public understand that all cemeteries operated by the United States Government should not be covered with lush Kentucky Blue Grass? Can the public understand that the government cannot afford to maintain roadsides as if they were the nation's front yards? Can the public accept a new ecological aesthetic?

(4) How will agencies be provided training in the use and maintenance of planted native landscapes? Do the Agencies currently have resources that could be diverted to this new training, or is the new program going to require additional resources?

(5) Under what conditions is the planting of native species practicable and appropriate? Should native species be used primarily outside urban areas?

(6) How do we avoid weed free seeds, to avoid accidental introduction of non-natives, or aggressive exotic species to a project? Are state agricultural seed standards strong enough?

*(b) Design, Use, or Promote Construction Practices that Minimize Adverse Effects on the Natural Habitat*

*Intent:* The language here seeks to: (1) Maintain and promote the existing natural habitat; (2) Minimize disturbance to the natural habitat; and (3) Integrate design and construction of Federal projects with the surrounding natural habitat.

*Discussion:* These principals are to be applied to federally funded projects where cost effective and to the extent practicable. We do not envision major restoration of natural habitats to be accomplished under this executive memorandum, nor do we envision that cost and time considerations will be sublimated in that effort. Instead, we envision that through thoughtful design work, proper planning and quality construction, these goals will be achieved. Although first-cost construction may be higher, overall costs may prove lower as costs for irrigation, maintenance, fertilization and pest control may decline.

*Concerns:* (1) What is the definition of 'natural habitat'? This definition could embrace both "native" and "existing" habitat with the determination being site specific and made on a case-by-case basis. Is a "Natural Habitat" the local association of plants adapted to the soil, topography and climate of an area that provide food and cover for indigenous species of the area?

(2) To what extent should we expend additional revenue in support of minimizing adverse impacts to the natural habitat? Clearly, if the implementation of these principles produces lower costs and minimal or no impact to time delivery, it will be readily accepted, but, measuring costs and cost-effectiveness can be subjective. Record keeping will be imperative.

(3) What is the best method for getting appropriate design principles incorporated into Federal agency design specifications and guidance, etc? In particular, how can we get landscape designs integrated with the natural habitat, incorporating native plants, xeriscaping principles and water efficient irrigation?

(4) How can we ensure that the principles and practices identified in the Executive Memorandum are implemented by Federal agencies? Should this be the responsibility of each Agency's Environmental Executive (designated under Executive Order 12873)?

**(c) Seek to Prevent Pollution By, Among Other Things, Reducing Fertilizer and Pesticide Use, Using Integrated Pest Management Techniques, Recycling Green Waste, and Minimizing Runoff. Landscaping Practices that Reduce the Use of Toxic Chemicals Provide One Approach for Agencies to Reach Reduction Goals Established in Executive Order No. 12856, "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements;"**

*Discussion:* Landscaping practices which do not require, or require only limited, application of fertilizer and/or pesticides may result in significant prevention of pollution in several ways. First, and most conspicuous, any decreased need for application decreases the likelihood that adverse environmental impacts associated with runoff of these chemicals will occur. In addition, reduced need for chemical substances will decrease the amount of energy expended to produce these chemicals. One practice, the use of integrated pest management, not only serves to reduce or eliminate the need for pesticide application and thus prevent pollution, it generally results in significant reductions in unintended impacts to non-target species, resulting in an secondary environmental benefit beyond pollution prevention. Additionally, recycling of "green waste" results in a range of environmental benefits linked to pollution prevention. The collection, composting and ultimate reuse of green wastes not only reduces the amount of materials placed in landfills, it decreases and can eliminate the need for man-made fertilizers and thus reaps the same benefits as other such landscaping practices. Finally, landscaping practices may serve a vital role in pollution prevention through the use of plants as barriers to pollution and to absorb natural or man made pollutants which may otherwise enter natural systems such as waterbodies. For example, buffer plantings along waterways act to absorb excess nutrients and chemical pollutants which might otherwise enter waterways.

*Concerns:* (1) How can the Federal community best accomplish this task? Non-traditional landscaping practices such as integrated pest management not only require training to be effective, they require acceptance on the part of facility managers.

**(d) Implement Water-Efficient Practices, Such As the Use of Mulches, Efficient Irrigation Systems, Audits to Determine Exact Landscaping Water-Use Needs, and Recycled or Reclaimed Water and the Selecting and Siting of Plants in A Manner that Conserves Water and Controls Soil Erosion. Landscaping practices, Such As Planting Regionally Native Shade Trees Around Buildings to Reduce Air Conditioning Demands, Can Also Provide Innovative Measures to Meet the Energy Consumption Reduction Goal Established in Executive Order No. 12902, "Energy Efficiency and Water Conservation at Federal Facilities;"**

*Discussion:* Certain landscaping practices by design result in elimination or reduction of supplementary water needed to sustain landscaped areas and prevent or reduce soil erosion. Practices such as the use of mulches which reduce evaporation from landscaped areas and effective siting of landscape plantings can decrease the need for supplemental water and prevent physical erosion of the soil. Other practices, such as efficient irrigation systems and water audits, ensure that supplemental water is used most effectively and only when necessary. Additionally, the use of recycled or reclaimed water offers an alternative to the use of potable water which both satisfies landscaping water needs and conserves energy by decreasing the need for treated water. Finally, consideration of the natural shading effect associated with landscape plantings can serve to reduce heat loadings on buildings and result in energy conservation. These landscaping practices can conserve valuable water resources and energy and provide significant environmental benefits to affected Federal property managers.

*Concerns:* (1) Since the use of non-traditional landscaping practices will require training to ensure success, how can the Federal government ensure that facility managers are aware of, and accept, non-traditional water-efficient landscaping practices?

(2) Are there potential problems with the use of recycled or reclaimed water?

(3) Likewise, are there potential problems with the use of recycled materials, i.e. newspaper and sludge?

**(e) Create Outdoor Demonstrations Incorporating Native Plants, As Well As Pollution Prevention and Water Conservation Techniques, to Promote Awareness of the Environmental An Economic Benefits of Implementing This Directive. Agencies are Encouraged to Develop Other Methods for Sharing Information on Landscaping Advances With Interested Nonfederal Parties**

*Discussion:* Many Federal facilities have a significant acreage of open land which remains unused for facility buildings and infrastructure. In many instances, the public is actively invited to use these lands for passive recreational purposes such as bird watching, picnicking, or hiking. These areas, therefore present a significant opportunity to showcase the aesthetic and economic effectiveness of environmentally beneficial landscaping. Demonstration projects allow both public and private interests to experience the benefits of landscaping practices and apply those practices to their own landscaping activities. Other technology and information transfer methods such as workshops and brochures can also provide this benefit.

*Concerns:* (1) In this era of restricted resources, will the public understand the use of public funds for landscaping demonstration projects?

The text of the Presidential Memorandum follows:

**Memorandum on Environmentally Beneficial Landscaping**

April 26, 1994.

**Memorandum for the Heads of Executive Departments and Agencies**

Subject: Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds

The Report of the National Performance Review contains recommendations for a series of environmental actions, including one to increase environmentally and economically beneficial landscaping practices at Federal facilities and federally funded projects. Environmentally beneficial landscaping entails utilizing techniques that complement and enhance the local environment and seek to minimize the adverse effects that the landscaping will have on it. In particular, this means using regionally native plants and employing landscaping practices and technologies that conserve water and prevent pollution.

These landscaping practices should benefit the environment, as well as generate long-term costs savings for the Federal Government. For example, the use of native plants not only protects our natural heritage and provides wildlife habitat, but also can reduce fertilizer, pesticide,and irrigation demands and their associated costs because native plants are suited to the local environment and climate.

Because the Federal Government owns and landscapes large areas of land, our stewardship presents a unique opportunity to provide leadership in this area and to develop practical and cost-effective methods to preserve and protect that which has been entrusted to us. Therefore, for Federal grounds, Federal projects, and federally funded projects, I direct that agencies shall, where cost-effective and to the extent practicable:

(a) Use regionally native plants for landscaping;

(b) Design, use, or promote construction practices that minimize adverse effects on the natural habitat;

(c) Seek to prevent pollution by, among other things, reducing fertilizer and pesticide use, using integrated pest management techniques, recycling green waste,and minimizing runoff. Landscaping practices that reduce the use of toxic chemicals provide one approach for agencies to reach reduction goals established in Executive Order No. 12856 "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements;"

(d) Implement water-efficient practices, such as the use of mulches, efficient irrigation systems, audits to determine exact landscaping water-use needs,and recycled or reclaimed water and the selecting and siting of plants in a manner that conserves water and controls soil erosion. Landscaping practices, such as planting regionally native shade trees around buildings to reduce air conditioning demands, can also provide innovative measures to meet the energy consumption reduction goal established in Executive Order No. 12902, "Energy Efficiency and Water Conservation at Federal Facilities;" and

(e) Create outdoor demonstrations incorporating native plants, as well as pollution prevention and water conservation techniques, to promote awareness of the environmental and economic benefits of implementing this directive. Agencies are encouraged to develop other methods for sharing information on landscaping advances with interested nonfederal parties.

In order to assist agencies in implementing this directive the Federal Environmental Executive shall:

(a) Establish an interagency working group to develop recommendations for guidance, including compliance with the requirements of the National Environmental Policy Act, 42 U.S.C.4321, 4331–4335, and 4341–4347, and training needs to implement this directive. The recommendations are to be developed by November 1994; and

(b) Issue the guidance by April 1995.To the extent practicable, agencies shall incorporate

this guidance into their landscaping programs and practices by February 1996. In addition, the Federal Environmental Executive shall establish annual awards to recognize outstanding landscaping efforts of agencies and individual employees. Agencies are encouraged to recognize exceptional performance in the implementation of this directive through their awards programs. Agencies shall advise the Federal Environmental Executive by April 1996 on their progress in implementing this directive. To enhance landscaping options and awareness, the Department of Agriculture shall conduct research on the suitability, propagation, and use of native plants for landscaping. The Department shall make available to agencies and the public the results of this research.

**Fran McPoland,**

*Federal Environmental Executive.*

[FR Doc. 94–20552 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–P

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[FRL–5055–1]

## Workshop on Revising the Guidelines for Carcinogen Risk Assessment; Meetings

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA's) Office of Health and Environmental Assessment (OHEA) and Risk Assessment Forum. OHEA and the Risk Assessment Forum will convene a panel of experts to review a draft document entitled, Draft Revisions to the Guidelines for Carcinogen Risk Assessment (External Review Draft, August 1994). Discussion will focus on the proposed revisions to the Agency's cancer risk assessment guidelines.

**DATES:** The workshop will be held Monday, September 12, 1994, through Wednesday, September 14, 1994. The meeting will begin at 8:30 a.m. and end at 5 p.m. on Monday and Tuesday, and will begin at 9 a.m. and end at noon on Wednesday. Members of the public may attend as observers.

**ADDRESSES:** The meeting will be held at the Hyatt Regency Hotel, 1800 Presidential Street, Reston, Virginia 22090, Tel: 703/709–1234.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, contact Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02173, Tel: 617/674–7374 by August 31, 1994. Space is limited, so please register early.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Dr. Harry Teitelbaum, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Tel: 202/260–6743.

**SUPPLEMENTARY INFORMATION:** In 1986, EPA published Guidelines for Carcinogen Risk Assessment (51 FR 33992; September 24, 1986). Scientific advances in both risk assessment and carcinogenesis have led EPA and the broader scientific community to new perspectives on cancer risk assessment and related new perspectives on EPA's Cancer Risk Assessment Guidelines.

As part of its efforts to update and revise the 1986 Guidelines, the Agency will hold a workshop in Reston, Virginia, on September 12–14, 1994, to discuss the major changes contemplated for these guidelines. At this meeting, experts on cancer risk assessment and its associated sciences will comment on and discuss a working draft for revising the 1986 cancer risk assessment guidelines. The workshop aims to produce recommendations to the Agency on the use of default assumptions and wider application of mechanistic data in cancer risk assessment, among other things.

To obtain a single copy of the draft document (paper or Word Perfect 5.1 disk), interested parties should contact the ORD publications office by telephone or FAX, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, FAX (513), 569–7566. Please provide your name and mailing address, the document title: Draft Revisions to the Guidelines for Carcinogen Risk Assessment (External Review Draft, August 1994), and EPA document number EPA/600/BP–92/003 (for paper) or EPA/600/BP–92/003a (for disk).

Dated: August 15, 1994.

**Carl Gerber,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 94–20553 Filed 8–19–94; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–89, FCC 94–192]

## Elehue Kawika Freemon and Lucille K. Freemon v. American Telephone and Telegraph Company; Designation for Hearing

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Designation for Hearing.

**SUMMARY:** This *Hearing Designation Order* designates for hearing a formal complaint proceeding to resolve material questions of fact surrounding the American Telephone and Telegraph Company's (AT&T's) handling of an operator-assisted telephone call involving the complainants in this case, Elehue Kawika Freemon and Lucille K. Freemon (together the Freemons or complainants). The issue to be decided in the proceeding is whether AT&T's actions violated Section 705 of the Communications Act and, if so, whether the Freemons suffered any measurable harm as a consequence of such violations and are entitled to an award of damages from AT&T.

**FOR FURTHER INFORMATION CONTACT:** Keith Nichols, Formal Complaints and Investigations Branch, Common Carrier Bureau, (202) 632–4887.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Hearing Designation Order* in CC Docket No. 94–89, adopted July 20, 1994, and released August 11, 1994.

The complete text of this *Hearing Designation Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 1919 M Street, NW., room 246, Washington, DC 20554.

### Synopsis of Hearing Designation Order

1. The Freemons filed a formal complaint with the Commission pursuant to Section 208 of the Act alleging that AT&T had violated Section 705 of the Act by monitoring the complainants' telephone conversation and disclosing its contents or meaning. AT&T disputes the legal and factual bases of the Freemons' claims.

2. After submission of numerous pleadings and motions to the Commission and discovery by the parties directed at clarifying the basis of their respective claims, both the facts and circumstances surrounding AT&T's handling of the Freemons' call are sharply disputed. Although neither AT&T nor the Freemons has formally requested that the complaint be designated for hearing, both have informally advised Commission staff that they view a hearing as the most appropriate and expeditious way to resolve the issues raised by the complaint.

3. Based on review of the record adduced in this matter, the Commission concluded that further proceedings are necessary to resolve material questions of fact bearing on whether AT&T violated Section 705 of the Communications Act in connection with its handling of the complainants' operator-assisted call as described in the complaint.

4. Accordingly, *it is ordered,* pursuant to Sections 4(i), 4(j), 201, 206, 207, 208, and 209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 206, 207, 208 and 209, that the above-captioned complaint proceeding is designated for hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the facts and circumstances surrounding AT&T's handling of Elehue Freemon's operator-assisted telephone call to his mother, Lucille Freemon, on May 30, 1988.

2. To determine whether a telephone conversation ensued between Elehue Freemon and Lucille Freemon on May 30, 1988, at the time an AT&T operator handled the operator-assisted call at issue.

3. To determine whether AT&T, through its operator or otherwise, intercepted and disclosed the contents or meaning of any telephone conversation that may have taken place between Elehue Freemon and Lucille Freemon on May 30, 1988, within the meaning of Section 705 of the Communications Act.

4. To determine, in light of the evidence adduced under issues 1 through 3 above, whether AT&T's actions in handling Elehue Freemon's May 30, 1988 operator-assisted call violated Section 705 of the Communications Act.

5. To determine, in view of the evidence adduced on the foregoing issues, whether and if so, in what amounts, AT&T should be required to pay monetary damages to complainants.

6. To determine, in view of the evidence adduced on the foregoing issues, whether complainants are entitled to an award of prejudgment interest on any damages recovered in this proceeding.

5. *It is further ordered,* That the burden of proof and the burden of proceeding with the introduction of evidence shall be upon complainants.

6. *It is further ordered,* That the designated parties may avail themselves of an opportunity to be herd by filing with the Commission a Notice of Appearance in accordance with Section 1.221 of the Rules, 47 CFR 1.221, within twenty (20) days of the mailing of this Order.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–20512 Filed 8–19–94; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL MARITIME COMMISSION

### Request for Additional Information

*Agreement No.:* 202–011375–013.

*Title:* Trans-Atlantic Agreement.

*Parties:*

Atlantic Container Line AB
Cho Yang Shipping Co. Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen BV
Hapag Lloyd AG
Mediterranean Shipping Company, S.A.
DSR/Senator Joint Service
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
P&O Containers Limited
Nippon Yusen Kaisha
Neptune Orient Lines Limited
Tecomar S.A. de C.V.

*Synopsis:* Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 202–011375–013 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: August 16, 1994.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94–20478 Filed 8–19–94; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETINGS:** The following advisory committee meetings are announced:

### Antiviral Drugs Advisory Committee

*Date, time, and place.* September 12 and 13, 1994, 8:30 a.m.; Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Type of meeting and contact person.* Open committee discussion, September 12, 1994, 8:30 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; open committee discussion, September 13, 1994, 8:30 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

*General function of the committee.* The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 2, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss scientific and medical issues relevant to the validation of surrogate markers for use as criteria in regulatory decisionmaking.

### Anti-Infective Drugs Advisory Committee

*Date, time, and place.* September 23, 1994, 8 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Type of meeting and contact person.* Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last

that long; open committee discussion, 9 a.m. to 11:30 a.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

*General function of the committee.* The Anti-Infective Drugs Advisory Committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 16, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss surrogate markers, such as pharmacokinetic parameters and microbiological inhibitory and cidal data, and whether these parameters can be used instead of clinical efficacy data to support an alternative dosing regimen for oral metronidazole in the treatment of Trichomonas vaginalis vaginitis.

**Joint Meeting of the Dermatologic Drugs and Anti-Infective Drugs Advisory Committees**

*Date, time, and place.* September 23, 1994, 1 p.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Ermona B. McGoodwin or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

*General function of the committees.* The Dermatologic Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases. The Anti-Infective Drugs Advisory Committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 16, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committees will discuss the potential for development of antibiotic resistance with over-the-counter use of topical erythromycin in the treatment of acne.

**Peripheral and Central Nervous System Drugs Advisory Committee**

*Date, time, and place.* September 26 and 27, 1994, 8:30 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, September 26, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, September 27, 1994, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2775.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological diseases.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 19, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussions.* On September 26, 1994, the committee will discuss the safety and effectiveness of Freedox® (tirilazad mesylate), new drug application (NDA) 20–399, The Upjohn Co., for use in the treatment of subarachnoid hemorrhage. On September 27, 1994, the committee will discuss the safety and effectiveness of Tegretol® (carbamazepine), NDA 18–927, Basel Pharmaceuticals, for use as an anticonvulsant in children under 6 years old. Additionally, the committee will reconsider the relative risks and benefits of Felbatol® (felbamate), NDA 20–189, Carter-Wallace, for use in the treatment of epilepsy.

**National Mammography Quality Assurance Advisory Committee**

*Date, time, and place.* September 28, 1994, 10 a.m., and September 29 and 30, 1994, 8:30 a.m., Gaithersburg Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the FDA committee meeting block. Reservations will be confirmed at the group rate based on availability.

*Type of meeting and contact person.* Open public hearing, September 28, 1994, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open committee discussion, September 29, 1994, 8:30 a.m. to 5 p.m.; open committee discussion, September 30, 1994, 8:30 a.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1901 Chapman Ave., Rockville, MD 20857, 301–594–3311.

*General function of the committee.* The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss the draft final standards for accreditation bodies and the draft final standards for facilities. Specific topics to be discussed include: States as certifying bodies, mobile units, breast implant imaging, consumer complaint mechanism, and equipment other than the x-ray unit.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 15, 1994.

**Linda A. Suydam,**

*Interim Deputy Commissioner for Operations.*

[FR Doc. 94–20510 Filed 8–19–94; 8:45 am]

BILLING CODE 4160–01–F

## Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 55 FR 35363, August 29, 1990) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of Small Business, Scientific, and Trade Affairs (OSSTA), Office of External Affairs (OEA), is being abolished. In order to streamline FDA's organization structure, FDA intends to abolish a number of organizations in keeping with this Administration's reinventing government initiatives. The OSSTA is being abolished to reduce the number of organizations reporting to the Deputy Commissioner for External Affairs. The small business functions will be performed within the OEA.

Under section HF–B, Organization:

1. Delete subparagraph Office of Small Business, Scientific, and Trade Affairs (HFA–C), Office of External Affairs (HFAQ), in its entirety.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: August 8, 1994.

**David A. Kessler,**

*Commissioner of Food and Drugs.*

[FR Doc. 94–20518 Filed 8–19–94; 8:45 am]

BILLING CODE 4160–1–M

## Health Resources and Services Administration

### Final Criteria for Meeting the General Statutory Funding Preference for Grants for Nurse Anesthetist Faculty Fellowships for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final criteria for meeting the general statutory funding preference for fiscal year (FY) 1994 Grants for Nurse Anesthetist Faculty Fellowships under the authority of section 831(b), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

#### Purpose

Section 831(b) of the Public Health Service Act authorizes the Secretary to make grants to provide financial assistance to certified registered nurse anesthetists (CRNA) who are faculty members in accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions.

#### Statutory Funding Preference

Section 860(e) of the PHS Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, enacted on October 13, 1992, provides for the following statutory preference for this program of Grants for Nurse Anesthetist Faculty Fellowships, as well as for certain other programs under titles VII and VIII of the PHS Act.

Statutory preference will be given to qualified applicants that: (1) Have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) have achieved, during the 2-year period preceding the fiscal year for which such an award is sought, a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th

percentile of applications that have been recommended for approval.

**Final Criteria for Meeting the General Statutory Funding Preference**

A notice was published in the Federal Register at 59 FR 25463 on May 16, 1994 to announce the FY 1994 grant cycle for this program and to propose the criteria for meeting the general statutory funding preference. No comments were received during the 30 day comment period. Therefore, the criteria for meeting the general statutory funding preference remain as proposed.

For Grants for Nurse Anesthetist Faculty Fellowships, qualified applicants will meet the general statutory funding preference if a minimum of 50% of the nurse anesthetist faculty are teaching in medically underserved communities.

**Additional Information**

If additional programmatic information is needed, please contact: Ms. Donna English, Acting Chief, Nursing Practice Resources Section, Division of Nursing. Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 Fax: (301) 443–8586.

This program, Grants for Nurse Anesthetist Faculty Fellowships, is listed at 93.907 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: August 16, 1994.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 94–20509 Filed 8–19–94; 8:45 am]

BILLING CODE 4160–15–P

## National Institutes of Health

### Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

| Study section/contact person | October-November 1994 meetings | Time | Location |
|---|---|---|---|
| **AIDS and Related Research Initial Review Group** | | | |
| AIDS and Related Research 1, Dr. Sami Mayyasi, 301–594–7073. | Nov. 3–4 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| AIDS and Related Research 2, Dr. Gilbert Meier, 301–594–7118. | Nov. 7–8 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| AIDS and Related Research 3, Dr. Marcel Pons, 301–594–7210. | Oct. 26–28 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| AIDS and Related Research 4, Dr. Mohindar Poonian, 301–594–7112. | Nov. 7–8 | 8:30 a.m. | Hyatt Regency Hotel, Bethesda, MD. |
| AIDS and Related Research 5, Dr. Mohindar Poonian, 301–594–7112. | Nov. 10 | 8:30 a.m. | Holiday Inn Crowne Plaza, Rockville, MD. |
| AIDS and Related Research 6, Dr. Gilbert Meier, 301–594–7118. | Nov. 4 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| AIDS and Related Research 7, Dr. Gilbert Meier, 301–594–7118. | Nov. 18 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| **Biobehavioral and Social Sciences Initial Review Group** | | | |
| Behavioral Medicine, Ms. Carol Campbell, 301–594–7165 | Oct. 5–7 | 8:30 a.m. | Holiday Inn, Georgetown, DC. |
| Bio-Psychology, Dr. A. Keith Murray, 301–594–7145 | Oct. 20–22 | 9:00 a.m. | The Georgetown Inn, Washington, DC. |
| Human Development and Aging–1, Dr. Teresa Levitin, 301–594–7141. | Oct. 26–28 | 9:00 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |
| Human Development and Aging–2, Dr. Peggy McCardle, 301–594–7293. | Oct. 3–4 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| Human Development and Aging–3, Dr. Anita Miller Sostek, 301–594–7358. | Oct. 24–26 | 8:30 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |
| Social Sciences and Population, Dr. Robert Weller, 301–594–7340. | Oct. 13–15 | 8:00 a.m. | Hyatt Regency Hotel, Bethesda, MD. |
| **Biochemical Sciences Initial Review Group** | | | |
| Biochemistry, Dr. Asher Hyatt, 301–594–7150 | Oct. 26–28 | 8:30 a.m. | The Georgetown Inn, Washington, DC. |
| Biomedical Sciences, Dr. Charles Baker, 301–594–7170 | Nov. 14–16 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Medical Biochemistry, Dr. Alexander Liacouras, 301–594–7264. | Oct. 17–19 | 8:00 a.m. | Ramada Hotel, Bethesda, MD. |
| Pathobiochemistry, Dr. Zakir Bengali, 301–594–7317 | Oct. 5–7 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Physiological Chemistry, Dr. Jerry Critz, 301–594–7322 | Oct. 27–29 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| **Biophysical and Chemical Sciences Initial Review Group** | | | |
| Bio-Organic and Natural Products Chemistry, Dr. Harold Radtke, 301–594–7212. | Oct. 20–22 | 9:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| Biophysical Chemistry, Dr. John Beisler, 301–594–7149 | Oct. 13–15 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| Medicinal Chemistry, Dr. Ronald Dubois, 301–594–7163 | Oct. 19–21 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Metallobiochemistry, Dr. Edward Zapolski, 301–594–7302 | Oct. 27–29 | 8:30 a.m. | Barcelo Washington Hotel, Washington, DC. |

| Study section/contact person | October-November 1994 meetings | Time | Location |
|---|---|---|---|
| Molecular and Cellular Biophysics, Dr. Nancy Lamontagne, 301–594–7147. | Oct. 6–8 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Physical Biochemistry, Dr. Gopa Rakhit, 301–594–7166 | Oct. 17–19 | 8:30 a.m. | Holiday Inn, Crowne Plaza, Rockville, MD. |
| **Cardiovascular Sciences Initial Review Group** | | | |
| Cardiovascular, Dr. Gordon Johnson, 301–594–7216 | Oct. 12–14 | 8:00 a.m. | Holiday Inn, Crowne Plaza, Rockville, MD. |
| Cardiovascular and Renal, Dr. Anthony Chung, 301–594–7338. | Oct. 17–19 | 8:30 a.m. | Mariott Hotel, Pooks Hill, Bethesda, MD. |
| Experimental Cardiovascular Sciences, Dr. Richard Peabody, 301–594–7344. | Oct. 12–14 | 8:00 a.m. | Embassy Suites Hotel, Chevy Chase Paviolion, Washington, DC. |
| Hematology–1, Dr. Clark Lum, 301–594–7260 | Oct. 20–22 | 8:00 a.m. | Holiday Inn, Bethesda, MD. |
| Hematology–2, Dr. Jerrold Fried, 301–594–7261 | Oct. 26–28 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Pharmacology, Dr. Joseph Kaiser, 301–594–7241 | Oct. 19–21 | 8:30 a.m. | American Inn, Bethesda, MD. |
| **Cell Development and Function Initial Review Group** | | | |
| Biological Sciences–2, Dr. Camilla Day, 301–594–7389 | Oct. 26–28 | 8:30 a.m. | The Georgetown Inn, Washington, DC. |
| Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, 301–594–7385. | Oct. 5–6 | 8:00 a.m. | American Inn, Bethesda, MD. |
| Cellular Biology and Physiology–2, Dr. Gerhard Ehrenspeck, 301–594–7387. | Oct. 12–14 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| Human Embryology and Development–2, Dr. Sherry Dupere, 301–594–7097. | Oct. 6–7 | 8:00 a.m. | Holiday Inn, Crowne Plaza, Rockville, MD. |
| International and Cooperative Projects, Dr. G.B. Warren, 301–594–7289. | Oct. 26–28 | 8:00 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |
| Molecular Biology, Dr. Robert Su, 301–594–7320 | Oct. 13–15 | 8:00 a.m. | Holiday Inn, Bethesda, MD. |
| Molecular Cytology, Dr. Ramesh Nayak, 301–594–7169 | Oct. 6–7 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| **Endocrinology and Reproductive Sciences Initial Review Group** | | | |
| Biochemical Endocrinology, Dr. Michael Knecht, 301–594–7247. | Oct. 5–7 | 8:30 a.m. | Hyatt Regency Hotel, Bethesda, MD. |
| Endocrinology, Dr. Syed Amir, 301–594–7229 | Oct. 12–14 | 8:30 a.m. | Holiday Inn, Georgetown, DC. |
| Human Embryology and Development–1, Dr. Arthur Hoversland, 301–594–7253. | Oct. 17–19 | 8:00 a.m. | Holiday Inn, Crowne Plaza, Rockville, MD. |
| Reproductive Biology, Dr. Dennis Leszczynski, 301–594–7218. | Oct. 10–12 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| Reproductive Endocrinology, Dr. Abunbakar Shaikh, 301–594–7368. | Oct. 3–5 | 8:30 a.m. | Holiday Inn Crowne Plaza, Rockville, MD. |
| **Genetic Sciences Initial Review Group** | | | |
| Biological Sciences–1, Dr. Nancy Pearson, 301–594–9505 | Nov. 2–4 | 8:30 a.m. | St. James Hotel, Washington, DC. |
| Genetics, Dr. David Remondini, 301–594–7202 | Oct. 13–15 | 9:00 a.m. | Holiday Inn, Bethesda, MD. |
| Genome, Dr. Cheryl Corsaro, 301–594–7336 | Oct. 31–Nov. –2 | 9:00 a.m. | Wyndham Bristol Hotel, Washington, DC. |
| Mammalian Genetics, Dr. Jerry Roberts, 301–594–7051 | Oct. 5–7 | 9:00 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |
| **Health Promotion and Disease Prevention Initial Review Group** | | | |
| Epidemiology and Disease Control–1, Dr. Scott Osborne, 301–594–7060. | Oct. 12–14 | 8:00 a.m. | Residence Inn Marriott, Bethesda, MD. |
| Epidemiology and Disease Control–2, Dr. H. M. Stiles, 301–594–7194. | Oct. 19–21 | 8:30 a.m. | Dupont Plaza Hotel, Washington, DC. |
| Nursing Research, Dr. Gertrude McFarland, 301–594–7080. | Oct. 3–5 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Safety and Occupational Health, Dr. Gopal Sharma, 301–594–7130. | Oct. 12–14 | 8:00 a.m. | Holiday Inn, Crowne Plaza, Rockville, MD. |
| Toxicology–1, Dr. Alfred Marozzi, 301–594–7278 | Oct. 12–14 | 8:00 a.m. | American Inn, Bethesda, MD. |
| Toxicology–2, Dr. Alfred Marozzi, 301–594–7278 | Oct. 26–28 | 8:00 a.m. | American Inn, Bethesda, MD. |
| **Immunological Sciences Initial Review Group** | | | |
| Allergy and Immunology, Mr. Howard Berman, 301–594–7234. | Oct. 12–14 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Experimental Immunology, Dr. Calbert Laing, 301–594–7190. | Oct. 5–7 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Immunobiology, Dr. Betty Hayden, 301–594–7310 | Oct. 26–28 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| Immunological Sciences, Dr. Anita Corman Weinblatt, 301–594–7175. | Oct. 19–21 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |

| Study section/contact person | October-November 1994 meetings | Time | Location |
|---|---|---|---|
| Immunology, Virology and Pathology, Dr. Lynwood Jones, 301–594–7262. | Oct. 12–14 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| **Infectious Diseases and Microbiology Initial Review Group** | | | |
| Bacteriology and Mycology–1, Dr. Timothy Henry, 301–594–7228. | Oct. 26–28 | 8:30 a.m. | Ramada Hotel, Bethesda, MD. |
| Bacteriology and Mycology–2, Dr. William Branche, Jr., 301–594–7279. | Oct. 5–7 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Experimental Virology, Dr. Garrett Keefer, 301–594–7099 | Oct. 17–19 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Microbial Physiology and Genetics-1, Dr. Martin Slater, 301–594–7176. | Oct. 26–28 | 8:30 a.m. | Holiday Inn, Governor's House, Washington, DC. |
| Microbial Physiology, and Genetics-2, Dr. Gerald Liddel, 301–594–7167. | Oct. 19–21 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| Tropical Medicine and Parasitology, Dr. Jean Hickman, 301–594–7078. | Oct. 12–14 | 8:00 a.m. | Holiday Inn, Bethesda, MD. |
| Virology, Dr. Rita Anand, 301–594–7108 | Oct. 12-14 | 8:30 a.m. | Holiday Inn Crowne Plaza, Rockville, MD. |
| **Musculoskeletal and Dental Sciences Initial Review Group** | | | |
| General Medicine A–1, Dr. Harold Davidson, 301–594–7313. | Oct. 16–18 | 7:00 p.m. | Marriott Hotel, Pooks Hill, Bethesda, MD. |
| General Medicine B, Dr. Daniel McDonald, 301–594–7301 | Oct. 12–14 | 8:00 a.m. | Holiday Inn, Bethesda, MD. |
| Oral Biology and Medicine-1, Dr. Larry Pinkus, 301–594–7315. | Oct. 17–19 | 8:30 a.m. | Ramada Hotel, Alexandria, VA. |
| Oral Biology and Medicine-2, Dr. Priscilla Chen, 301–594–7287. | Oct. 17–19 | 8:30 a.m. | Holiday Inn Old Town, Alexandria, VA. |
| Orthopedics and Musculoskeletal, Ms. Ileen Stewart, 301–594–7282. | Oct. 12–14 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| **Neurological Sciences Initial Review Group** | | | |
| Neurological Sciences-1, Dr. Carl Banner, 301–594–7206 | Oct. 12–14 | 8:30 a.m. | St. James Hotel, Washington, DC. |
| Neurological Sciences-2, Dr. Stephen Gobel, 301–594–7356. | Oct. 11–13 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| Neurology A, Dr. Joe Marwah, 301–594–7158 | Nov. 8–10 | 8:30 a.m. | Hollywood Beach Hilton, Miami, FL. |
| Neurology B–1, Dr. Lillian Pubols, 301–594–7325 | Oct. 11–13 | 8:30 a.m. | The Hotel Washington, Washington, DC. |
| Neurology B–2, Dr. Herman Teitelbaum, 301–594–7245 | Oct. 24–26 | 8:30 a.m. | Holiday Inn, Chevy Chase, MD. |
| Neurology C, Dr. Kenneth Newrock, 301–594–7123 | Oct. 12–14 | 8:30 a.m. | Barcelo Washington Hotel, Washington, DC. |
| **Nutritional and Metabolic Sciences Initial Review Group** | | | |
| Clinical Sciences-1, Ms. Jo Pelham, 301–594–7254 | Oct. 20–21 | 8:30 a.m. | Holiday Inn, Bethesda, MD. |
| Clinical Sciences-2, Ms. Jo Pelham, 301–594–7254 | Oct. 27–28 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| General Medicine A–2, Dr. Mushtaq Khan, 301–594–7168 | Oct. 8–10 | 8:30 a.m. | Loews Santa Monica Beach Hotel, Santa Monica, CA. |
| Metabolism, Dr. Krish Krishnan, 301–594–7156 | Oct. 26–28 | 8:30 a.m. | Holiday Inn, Georgetown, DC. |
| Nutrition, Dr. Sooja Kim, 301–594–7174 | Oct. 5–7 | 8:30 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |
| **Oncological Sciences Initial Review Group** | | | |
| Chemical Pathology, Dr. Edmund Copeland, 301–594–7154. | Oct. 24–26 | 8:00 a.m. | Holiday inn, Chevy Chase, MD. |
| Experimental Therapeutics-1, Dr. Philip Perkins, 301–594–7324. | Oct. 12–14 | 8:30 a.m. | Hyatt Hotel, Arlington, VA. |
| Experimental Therapeutics-2, Dr. Marcia Litwack, 301–594–7366. | Oct. 26–28 | 8:30 a.m. | Holiday Inn Crowne Plaza, Rockville, MD. |
| Metabolic Pathology, Dr. Marcelina Powers, 301–594–7120. | Oct. 12–14 | 8:00 a.m. | The Georgetown Inn, Washington, DC. |
| Pathology A, Dr. Larry Pinkus, 301–594–7315 | Oct. 4–7 | 7:30 p.m. | Holiday Inn, Bethesda, MD. |
| Pathology B, Dr. Martin Padarathsingh, 301–594–7192 | Oct. 12–14 | 8:00 a.m. | Holiday Inn, Georgetown, DC. |
| Radiation, Dr. Paul Strudler, 301–594–7152 | Oct. 17–19 | 8:30 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |
| **Pathophysiological Sciences Initial Review Group** | | | |
| Lung Biology and Pathology, Dr. Anne Clark, 301–594–7115. | Oct. 12–14 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| Physiology, Dr. Michael Lang, 301–594–7332 | Oct. 12–14 | 8:30 a.m. | Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC. |

| Study section/contact person | October-November 1994 meetings | Time | Location |
|---|---|---|---|
| Respiratory and Applied Physiology, Dr. Everett Sinnett, 301–594–7220. | Oct. 24–26 | 8:00 a.m. | Holiday Inn, Bethesda, MD. |
| **Sensory Sciences Initial Review Group** | | | |
| Hearing Research, Dr. Joseph Kimm, 301–594–7257 | Oct. 10–12 | 8:30 a.m. | Hyatt Regency Hotel, Bethesda, MD. |
| Sensory Disorders and Language, Dr. Jane Hu, 301–594–7269. | Oct. 12–14 | 8:30 a.m. | Holiday Inn Capitol Hill, Washington, DC. |
| Visual Sciences A, Dr. Luigi Giacometti, 301–594–7132 | Oct. 26–28 | 8:30 a.m. | Holiday Inn Crowne Plaza, Rockville, MD. |
| Visual Sciences B, Dr. Leonard Jakubczak, 301–594–7198. | Oct. 5–7 | 8:30 a.m. | The Latham Hotel, Georgetown, DC. |
| Visual Sciences C, Dr. Carole Jelsema, 301–594–7311 | Oct. 5–7 | 8:00 a.m. | Holiday Inn, Governor's House, Washington, DC. |
| **Surgery, Radiology and Bioengineering Initial Review Group** | | | |
| Diagnostic Radiology, Dr. Catharine Wingate, 301–594–7295. | Oct. 3–5 | 8:30 a.m. | Marriott Hotel, Pooks Hill, Bethesda, MD. |
| Surgery and Bioengineering, Dr. Paul Parakkal, 301–594–7258. | Oct. 3–4 | 8:00 a.m. | Holiday Inn, Chevy Chase, MD. |
| Surgery, Anesthesiology and Trauma, Dr. Keith Kraner, 301–594–7308. | Oct. 19–21 | 2:00 p.m. | Holiday Inn, Bethesda, MD. |

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(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: August 16, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–20515 Filed 8–19–94; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. D–94–1068; FR–3768–D–01]**

### Revocation in Part and Delegation of Authority.

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of revocation in part and delegation of authority.

**SUMMARY:** This notice delegates authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Policy Development and Research (PD&R) with regard to three specific programs. These programs include the Work Study Program and the Joint Community Development Program, under Section 107 of Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5307, and the Community Outreach Partnerships Program, under the Community Outreach Partnership Act of 1992, 42 U.S.C. 5307 note. These programs were previously administered by the Assistant Secretary for Community Planning and Development (CPD).

**EFFECTIVE DATE:** August 15, 1994, (except for the Work Study Program, for which the revocation in part and the delegation of authority shall be effective on September 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Lawrence L. Thompson, General Deputy to the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1600. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:** In order to achieve the goal of increasing the communication and collaboration among HUD, universities and local communities, the Secretary has determined to create a new Office of University Partnerships within the Office of the Assistant Secretary for Policy Development and Research. The purpose of this office is to strengthen HUD's ties with academic institutions because of the ideas and research they can offer in the making of policy, and because of their role in training the next generation of urban scholars and professionals.

Due to the creation of this new office, certain HUD programs which belong within it need to be relocated under the Assistant Secretary for Policy Development and Research. These programs include the Work Study Program, the Community Outreach Partnerships Program, and the Joint Community Development Program. Prior to when these delegations have taken, and will take, effect, they were administered within the Office of the Assistant Secretary for Community Planning and Development. It is noted that the power and authority of the Secretary under the Work Study Program shall not be delegated to the Assistant Secretary for PD&R until September 6, 1994. This is in order to best serve the needs of the public due to the present stage of the funding and review process for this program.

Accordingly, the Secretary delegates, and revokes in part, authority as follows:

### Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Policy Development and Research (PD&R) the power and authority of the Secretary with respect to the programs listed below:

1. The Work Study Program, Section 107(c) of Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5307(c).

2. The Joint Community Development Program, Section 107(b)(5) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5307(b)(5).

3. The Community Outreach Partnerships Program, within the Community Outreach Partnership Act of 1992, 42 U.S.C. 5307 note, and Section 107 of the Housing Development Act of 1974, as amended, 42 U.S.C. 5307.

Such delegated authority includes all existing and current grants and agreements for which Community Planning and Development is relieved of administration and liability.

**Section B. Authority to Redelegate**

The authority granted pursuant to Section A., above, may be further redelegated pursuant to this delegation.

**Section C. Authority Revoked in Part**

The Secretary of Housing and Urban Development revokes in part the Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, published in the Federal Register at 48 FR 49384 on October 25, 1983. In Section A.1., with regard to the authority delegated under Title I of the Housing and Community Development Act of 1974, the Secretary revokes the delegation to exercise the power and authority of the Secretary with respect to the Work Study Program, under Section 107(c), and the Joint Community Development Program, under 107(b)(5). The Secretary further revokes any and all authority delegated to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development under Section 107 or Title I pertaining to the Community Outreach Partnerships Program, 42 U.S.C. 5307 note.

**Authority:** Sec. 7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: August 15, 1994.

**Henry G. Cisneros,**

*Secretary of Housing and Urban Development.*

[FR Doc. 94-20477 Filed 8-19-94; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE INTERIOR

### Performance Review Board Appointments

**AGENCY:** Department of the Interior.

**ACTION:** Notice of Performance Review Board Appointments.

**SUMMARY:** This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board. The publication of these appointments is required by Section 405(a) of the Civil Service Reform Act of 1978 (Pub.L. 95-454, 5 U.S.C. 4314(c)(4).

**DATE:** These appointments are effective upon publication in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Woodrow W. Hopper, Jr., Director of Personnel, Office of the Secretary, Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, Telephone Number: (202) 208-6761.

**Department of the Interior SES Performance Review Board—1994**

Mary Ann Lawler, Chair, Office of Budget (Career Appointee)
Carol Bacon, Bureau of Indian Affairs (Career Appointee)
Joseph E. Doddridge, Office of the Assistant Secretary for Fish and Wildlife and Parks (Career Appointee)
Gayle F. Gordon, Office of Information Resources Management (Career Appointee)
B.J. Griffith, National Park Service (Career Appointee)
Debra S. Knopman, Office of the Assistant Secretary for Water and Science (Noncareer Appointee)
Lucy R. Querques, Minerals Management Service (Career Appointee)
J. Lynn Smith, U.S. Geological Survey (Career Appointee)

Dated: August 16, 1994.

**James E. Reed,**

*Acting Director of Personnel.*

[FR Doc. 94-20501 Filed 8-19-94; 8:45 am]

BILLING CODE 4310-10-M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB-290 (Sub-No. 143X)]**

### Central of Georgia Railway Company—Abandonment Exemption—In Laurens County, GA

Central of Georgia Railway Company (Central) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.94 mile of rail line between mileposts 36.34-WT and 37.28-WT at Dublin, in Laurens County, GA.

Central has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 21, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by September 1, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Central has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 26, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–20543 Filed 8–19–94; 8:45 am]

BILLING CODE 7035–01–P

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**[Docket No. AB–43 (Sub-No. 160X)]**

## Illinois Central Railroad Company—Abandonment Exemption—in Jackson, MS

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 4.5 mile rail line in Hinds County, MS, known as the Jackson, Mississippi line, extending from milepost NN–181.21 to milepost NN–185.15 and from milepost NN–186.95 to milepost NN–187.52, in Jackson, MS.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 21, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 1, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 12, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Myles L. Tobin, 455 N. Cityfront Plaza Dr., 20th floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 26, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 10, 1994.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–20542 Filed 8–19–94; 8:45 am]

BILLING CODE 7035–01–P

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–9662]**

### Proposed Class Exemption for Certain Transactions Involving Insurance Company General Accounts

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed class exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would exempt prospectively and retroactively to January 1, 1975, certain transactions engaged in by insurance company general accounts in which an employee benefit plan has an interest, if certain specified conditions are met. Additional exemptive relief is proposed for plans to engage in transactions with persons who provide services to insurance company general accounts. The proposal would also permit transactions relating to the origination and operation of certain asset pool investment trusts in which a general account has an interest as a result of the acquisition of certificates issued by the trust. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, insurance company general accounts, as well as other persons engaging in the described transactions.

**DATES:** Written comments and requests for a hearing shall be submitted to the Department before October 21, 1994. If granted, the exemption would be effective January 1, 1975.

**ADDRESSES:** All written comments (preferably 3 copies) and 9 hearing requests should be sent to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, 200 Constitution Avenue NW., Washington, DC 20210, Attention: ACLI Class Exemption Proposal. The

application for exemption (Application Number D–9662), as well as all comments received from interested persons, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 219–8971 (not a toll-free number) or Timothy Hauser, Plan Benefits Security Division, Office of the Solicitor, (202) 219–8637 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This document contains a notice of pendency before the Department of a proposed class exemption from certain of the restrictions of sections 406 and 407 of ERISA and from certain taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application dated March 25, 1994, submitted by the American Council of Life Insurance (the ACLI) [1] pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR section 2570 subpart B (55 FR 32836, August 10, 1990). In addition, the Department is proposing additional relief on its own motion pursuant to the authority described above.[2]

**Background**

Life insurance companies issue a variety of group contracts for use in connection with employee pension benefit plans, some of which provide benefits the amount of which is guaranteed, some of which provide benefits that may fluctuate with the investment performance of the insurance company, and some of which offer elements of both. Under section 401(b)(2) of ERISA, if an insurance company issues a "guaranteed benefit policy" to a plan, the assets of the plan are deemed to include the policy, but do no, solely by reason of the issuance of the policy, include any of the assets of the insurance company. Section 401(b)(2)(B) defines the term "guaranteed benefit policy" to mean an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. In addition, in ERISA Interpretive Bulletin 75–2, 29 CFR 2509.75–2, the Department stated that if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets.

On December 13, 1993, the Supreme Court rendered its decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 114 S. Ct. 517 (1993) (*Harris Trust.)* The Supreme Court held that those funds allocated to an insurer's general account pursuant to a contract with a plan that vary with the investment experience of the insurance company are "plan assets" under ERISA. As a result, the Court concluded that Hancock was a fiduciary with respect to the management and disposition of such funds. Under the reasoning of this decision, a broad range of activities involving insurance company general accounts are subject to ERISA's fiduciary standards.

Prior to the *Harris Trust* decision, the insurance industry, following adoption of IB 75–2, operated under the assumption that general account assets were not plan assets, and thus, were not subject to ERISA's fiduciary responsibility provisions. As a result of the retroactive effect of the Supreme Court decision, numerous transactions engaged in by insurance company general accounts may have violated ERISA's prohibited transaction provisions. The insurance industry believes that, absent exemptive relief, it will be subject to significant additional litigation with respect to the operation of its general accounts.

If the underlying assets of a general account include plan assets, persons who have engaged in transactions with such general account may be viewed as parties in interest, including fiduciaries, with respect to plans which have interests as contractholders in the general account. Lastly, the underlying assets of an entity in which a general account acquired an equity interest may include plan assets as a result of the *Harris Trust* decision.

**Summary of the Application**

The application contains facts and representations with regard to the requested exemption that are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the Applicant.

The ACLI represents that presently, of the $1.5 trillion in general account assets of domestic life insurance companies, more than $558 billion relate to life insurance, health insurance and a broad variety of annuity products purchased by employee benefit plans. General account contracts, unlike all other investment and funding vehicles offered to plans, provide risk pooling, guarantees of principal and rates of return, as well as benefit guarantees, all of which are backed by every dollar in the general account. The Applicant further states that it is this pooling and assumption of risk that distinguish insurance companies from typical investment firms and for which the state insurance regulatory agencies impose stringent reserve and capital requirements.

Like any other business, insurance companies have developed new products to compete in an ever changing marketplace. In the pension area, various forms of participating general account contracts, especially deposit administration and immediate participation guarantee contracts, were specifically developed to be responsive to the expressed needs of plan sponsors. The ACLI states that even before enactment of ERISA, participating general account contracts provided a unique balance of investment participation and protection, as well as many billions of dollars of benefits to plan participants and beneficiaries. Participating contracts allow contractholders to share in the general accounts' favorable investment, mortality and morbidity experience, to obtain protection from unfavorable experience, and to provide certainty and dependability for the payment of benefits to participants and beneficiaries. According to the ACLI, these factors have enabled plan sponsors to fund their benefit promises and to increase the benefits to plan participants and beneficiaries.

Since the Supreme Court rendered its decision in *Harris Trust*, the legal landscape applicable to general account activities has been significantly altered. The ACLI represents that the Court's decision has created uncertainty regarding the status of general account operations and activities under ERISA-governed plans and will have a long-

[1] The ACLI is the major trade association of the life insurance business, representing 640 life insurance companies. these companies hold, in the aggregate, approximately 89% of the assets of all life insurance companies and 94% of the pension business with insurance companies.

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well as to the corresponding provisions of section 4975 of the Code.

term adverse effect on plan participants, the U.S. economy and the insurance industry in the absence of exemptive relief.

The ACLI notes that insurance companies invest approximately $675 billion of general account assets in the economy each year and that this is one of the largest sources of capital available in the United States, particularly for smaller and medium-sized businesses which are the source of most of the new job creation in our country. The Applicant states that the decision in *Harris Trust* has begun to slow, if not totally disrupt, the nation's capital markets. Investment bankers, brokers and banks, as well as insurance companies, are all now hesitant to engage in common, commercially reasonable and economically beneficial business transactions for fear of inadvertently violating ERISA's prohibited transaction restrictions. The Applicant believes that without the relief requested in its application, many ordinary practices of the insurance industry could be called into question.

The ACLI has requested unconditional retroactive relief from January 1, 1975, for all transactions that may be viewed as having been prohibited because insurance company general accounts may have held plan assets, as well as certain other transactions that may be viewed as having become prohibited merely as the result of an ERISA covered plan's purchase of a participating general account contract. The ACLI states that, although it is not possible to identify with specificity the types of transactions to be covered by the proposed exemption, such transactions would include (but are not limited to) the following:

(A) all internal operations of the general account (internal transactions); (B) all investment transactions involving general account assets, including transactions between the general account and a party in interest with respect to a plan that has purchased a general account contract; and (C) the purchase by the general account of securities issued by and real property leased to employers of employees covered by plans that have purchased general account contracts.

*Internal Transactions*

The ACLI represents that general accounts engage in a variety of internal activities which, given the application of ERISA, could potentially be viewed as prohibited. For example, income and losses generated by general account investments are allocated among lines of business (or, where applicable, among segments) or to surplus. Decisions must be made regarding the use of surplus, i.e., whether and to what extent to use surplus to pay dividends to policyholders or stockholders. In addition, general operational business decisions relating to salaries and benefits for the employees of the insurer, the provision of office space and materials, advertising expenses, charitable contributions, etc., could also be transactions subject to ERISA due to the pooled nature of general account assets. Thus, the ACLI represents that conceivably any of the myriad of decisions made by an insurance company regarding the structuring or internal operation of its business would need exemptive relief. In addition, the ACLI notes that many insurance companies use affiliates to provide investment management or property management services with regard to general account properties and assets.

*Investment Transactions With Third Parties*

The Applicant represents that due to the pooled nature of general account assets, it is conceivable that general account investment transactions with persons who are parties in interest with respect to ERISA-governed plans which have purchased participating general account contracts (external transactions) could be viewed as subject to the prohibited transaction rules of ERISA. For example insurance companies are currently the most significant source of loans for smaller and mid-sized companies in today's market. Many, if not all, of those companies have party in interest relationships with plans that have purchased general account contracts. Application of ERISA's prohibited transaction provisions would have an adverse impact on the primary source of credit for these companies. The ACLI further represents that application of the prohibited transaction rules in this case could, therefore, call into question almost every investment transaction by insurance company general accounts since the January 1, 1975, effective date of the ERISA fiduciary provisions.

The Applicant states that the relief needed for general account investment transactions would be similar to the broad relief provided in Prohibited Transaction Exemption 78–19, 43 Fed. Reg. 59915 (December 22, 1978), as amended and redesignated in PTE 90–1, 55 Fed. Reg. 2891, (January 29, 1990). PTE 90–1 provides conditional relief for certain transactions between insurance company pooled separate accounts in which plans have an interest and parties in interest with respect to those plans.[3]

*Additional Transactions*

In addition to broad relief for transactions between parties in interest and general accounts, the ACLI represents that various other transactions would need retroactive relief as a result of the potential plan asset treatment of general account assets.

Over the years, there have been literally thousands of persons and entities that have provided services to insurance companies. According to the ACLI, because of the size of insurance company general accounts, the number of service providers raises the possibility of countless, technical prohibited transactions which have posed no possibility of abuse. Thus, the ACLI requests relief for transactions that would be prohibited merely because a person is deemed to be a party in interest to a plan solely by reason of providing services to the general account (or who has a relationship with such service providers described in sections 3(14) (F), (G), (H), or (I) of ERISA).

The ACLI further represents that, under the Department's plan assets regulation, 29 CFR § 2510.3–101(f)(2)(iii), an insurance company investing general account assets could be viewed as a "benefit plan investor" for the purposes of calculating the 25 percent significant participation test in section 2510.3–101(f)(1) of the regulation. This could increase the number of entities that would hold plan assets as the result of a general account equity investment in an entity, and thereby also increase the number of possible prohibited transactions.[4] The

[3] Section I(a) of PTE 90–1 exempts from the restrictions of sections 406(a), 406(b)(2) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975 (c)(1)(A) through (D) of the Code:

Any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest, or any acquisition or holding by the pooled separate account of employer securities or employer real property, if the party in interest is not the insurance company which holds the plan assets in its pooled separate account, any other separate account of the insurance company, or any affiliate of the insurance company, and if, at the time of the transaction, acquisition or holding, either;

(1) The assets of the plan (together with the assets of any other plans maintained by the same employer or employee organization) in the pooled separate account do not exceed—

* * * * *

(iii) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after July 1, 1988; or * * *

[4] It is the Department's view that, for purposes of determining whether equity participation in an

ACLI notes that, as a further consequence of the general account's investment in an entity, the manager of the entity (and other service providers to the entity) might be deemed to be fiduciaries or other parties in interest under section 3(14) of ERISA. Therefore, the ACLI requests broad relief for transactions that would be prohibited solely because an entity has significant participation by benefit plan investors as a result of equity investments by general account(s).

*Employer Securities and Employer Real Property*

The Applicant represents that the breadth of general account investment activities over the last 20 years makes it likely that insurance companies have purchased and continued to hold for their general accounts, securities issued by or properties leased to employers of employees covered by plans that purchased general account contracts. Because insurance companies have made such investments with the understanding that general account assets were not plan assets, it is possible that general account investments include securities issued by employers, and real property leased to employers, that do not meet the standards set forth in section 407(a) of ERISA. The ACLI also believes that relief is necessary for the acquisition or holding of qualifying employer securities or qualifying real property by a plan under circumstances where the acquisition or holding contravenes sections 406 and 407(a) solely by reason of being aggregated with employer securities or employer real property held by an insurance company general account in which the plan holds an interest as a contractholder. The Applicant notes that the relief requested for such "excess holdings" is similar to the relief provided for pooled separate accounts in section I(c) of PTE 90–1.[5]

**The Proposed Exemption**

The scope of the exemption being proposed by the Department differs from that requested by the Applicant. As previously noted, the Department has granted a class exemption for insurance company pooled separate accounts that provides relief from ERISA's prohibited transaction provisions for a variety of transactions between separate accounts and parties in interest with respect to plans participating in such accounts. The Department has decided to propose similar relief, as described below, with respect to insurance company general account transactions to the extent that it believes that the requirements of section 408(a) of ERISA would be met. On its own motion, the Department is also proposing relief for certain transactions involving the operation of certain asset pool investment trusts. However, as more fully discussed below, the Department is not prepared at this time to propose several additional exemptions requested by the Applicant.

**Internal Transactions**

After considering the ACLI's requested exemption for activities in connection with the internal operation of general accounts, the Department has determined that it does not have sufficient information regarding the operation of such accounts to make the findings required by section 408(a)[6] of ERISA. In a letter dated May 20, 1994, the Department has requested from the ACLI the necessary information by posing a number of questions concerning the internal operations of general accounts. In that letter, the Department indicated that it would proceed with its review of their application as it pertains to the external transactions while awaiting their response to the questions.

Therefore, the Department is not proposing relief for transactions involving the internal operation of general accounts at this time.

**Additional Transactions**

In addition to requesting broad retroactive relief for general account transactions, the ACLI application also requests relief for certain other transactions that may be viewed as being prohibited under the Supreme Court's analysis in *Harris Trust* merely as a result of a plan's purchase of a participating general account contract. As previously noted, the significant participation test contained in the plan asset regulation (section 2510.3–101) is a "safe harbor" provision which provides that the assets of an entity will be considered to include plan assets only if equity participation by "benefit plan investors" is "significant". The ACLI represents that, under regulation section 2510.3–101(f)(2), an insurance company investing general account assets in an entity could be viewed as a benefit plan investor for the purposes of calculating the 25 percent significant participation test. As a result, transactions between the entity and a party in interest to a plan with an interest in the general account could be prohibited under section 406 of ERISA.[7] Accordingly, the ACLI seeks broad exemptive relief for transactions that would be prohibited solely because an entity is deemed to hold plan assets under the significant participation test as the result of an insurance company general account investment in such entity.

Based upon its consideration of the ACLI application and supporting documentation, the Department does not believe that it has sufficient information regarding the impact of the *Harris Trust* decision on entities that conducted their business operations in accordance with the significant participation exception contained in the plan asset regulation. Specifically, while the ACLI application generally identifies the potential impact of the *Harris Trust* decision on such entities, the application provides no specific information, either from the affected entities themselves or other independent sources concerning the makeup of such entities, a description of the transactions for which exemptive relief is necessary, or the standards and safeguards upon which exemptive relief for such transactions should be conditioned.

The Department believes that it is important that the standards and safeguards incorporated in any class exemption be feasible, effective, and protective of plans, participants and beneficiaries. Accordingly, this notice is intended to provide interested persons with an opportunity to submit written comments which will be considered by the Department in deciding whether to propose additional exemptive relief.

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entity by benefit plan investors is "significant" within the meaning of the significant participation test contained in the plan assets regulation, 29 CFR § 2510.3–101(f), only the proportion of an insurance company general account's equity investment in the entity that represents plan assets should be taken into account. Therefore, the proportion of that investment that represents plan assets would equal the proportion of the insurance company general account as a whole that constitutes plan assets.

[5] PTE 90–1, Section I(c) provides relief for:

Any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through a pooled separate account) if—

(1) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by an insurance company pooled separate account in which the plan has an interest, and

(2) The requirements of either paragraph (a) or paragraph (b) of this section are met.

[6] Section 408(a) of ERISA provides, among other things, that the Department may grant an exemption from the prohibited transaction rules only if finds that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan.

[7] In addition, the general partner of a partnership (or any other person with discretion over the assets of the entity) may be viewed as a fiduciary under ERISA which could raise issues under section 406(b) of ERISA.

The following is a list of some of the issues that have been identified by the Department. The list does not purport to identify all issues relevant to the development of exemptive relief, and comments on other matters raised by this portion of the ACLI request are also invited.

*A. Need for Exemptive Relief*

1. A description of the entities that may be affected by the *Harris Trust* decision in operating under the significant participation test by reason of an insurance company's investment of general account assets in such entity.

2. What types of transactions would require exemptive relief if the underlying assets of the entity include plan assets as a result of the *Harris Trust* decision? In this regard, please distinguish between transactions involving the internal operation of the entity and external transactions involving the entity and parties in interest with respect to plan contractholders of the general account investor.

3. What costs or hardships, if any, would result for plans if the Department does not provide relief for these transactions?

*B. Standards and Safeguards*

1. Describe whether any of such entities are subject to federal or state regulatory oversight. The response should include a brief description of the specific regulatory environment applicable to the entity and how the particular regulatory scheme serves as a constraint on the exercise of discretion by the persons responsible for the management of the entity.

2. What limitations or safeguards should a class exemption contain in order to reduce the potential for abuse of discretionary authority? For example, what limitations, if any, should be included with respect to:

(i) The types of transactions for which relief is provided?

(ii) Transactions which inure to the direct or indirect benefit of the entity manager or an affiliated person?

(iii) The scope of discretion exercised by the entity manager?

*C. Miscellaneous*

1. Describe any agreements that limit the discretionary authority of the entity manager with respect to the management or operation of the entity. For example, to what extent do investors independent of the manager retain any decision-making responsibility or authority?

2. Describe the methods used to determine the compensation of the entity manager and related persons for services provided to the entity. For example, does the manager have the ability to affect the timing and/or amount of its compensation?

3. To what extent would transactions prohibited as a result of the *Harris Trust* decision be covered by any existing statutory or administrative exemptions?

4. Describe whether the entity managers are affiliated with general account investors or other fiduciaries of plans that are accountholders of such general account investors.

5. What information does the entity provide to investors? For example, does the entity provide information regarding the internal operation of the entity prior to investment, and periodic disclosures during the period of investment?

6. What other standards should be included in a class exemption in addition to an arm's-length requirement? For example, should an exemption condition relief upon some degree of sophistication and financial accountability on the part of the entity manager?

**General Exemption**

The proposed exemption consists of six separate parts. Section I sets forth the basic exemption and enumerates certain conditions applicable to transactions described therein. Sections II and III of the proposal set forth three specific exemptions. Section IV contains the general conditions applicable to transactions described in sections I and II. Section V contains definitions for certain terms used in the proposed exemption. Section VI sets forth the effective date of the exemption.

**Section I**

The general exemption set forth in section I would provide an exemption from the restrictions of sections 406(a) and 407(a) for: (1) any transaction between a party in interest with respect to a plan and an insurance company general account, in which the plan has an interest as a contractholder; (2) any acquisition or holding by the general account of employer securities or employer real property; and (3) any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through an insurance company general account) if the acquisition or holding contravenes the restrictions of sections 406(A)(1)(E), 406(a)(2) and 407(a) of ERISA solely by reason of being aggregated with employer securities or employer real property held by an insurance company general account. The above exemptions are subject to the requirement that the plan's participation in the general account as measured by the amount of the reserves arising from the contract held by the plan, (determined under section 807(d) of the Code) does not exceed 10% of all liabilities of the general account.

The ACLI stated that it would be unfair to retroactively impose a percentage limitation in the requested exemption. In this regard, the Applicant represents that the level of insurance company general account investments activities and the breadth of general account holdings are so great that it would effectively preclude any single plan contractholder from exerting any undue influence over the decisions of an insurance company. Nevertheless, the Department has decided to reject the ACLI's recommendation that a percentage limitation not be imposed as a condition to broad exemptive relief. In the past, the Department has conditioned the availability of a number of class exemptions providing similar broad relief on a plan's interest in a collective fund or account not exceeding a specified percentage amount. The Department continues to believe that a plan that provides a significant percentage of an entity's business would, in many cases, be in a position to improperly influence the investment decisions of the entity. In any event, it does not appear that compliance with such a condition would be difficult in light of the apparent size of most general accounts.

**Section II**

Section II is divided into two subparts. Section II(a) of the proposed exemption would permit transactions involving persons who are parties in interest to a plan solely by reason of providing services to an insurance company general account in which the plan has an interest as a contractholder.

Based on precedents established in several class and individual exemptions the Department is proposing an exemption, in section II(b), that permits the furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by an insurance company general account to parties in interest if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

In the regular operations of places of public accommodation, such as hotels and motels, that may be purchased by an insurance company general account, many people, including parties in interest with respect to plans which have participating contracts with the general account, may receive use of

such rooms, service, food, etc. Such hotels and motels will typically be managed by hotel management companies who probably would not be aware of the relationship of the hotel and motel guests to the insurance company and the plans who purchased general account contracts.

**Section III**

Subsequent to the filing of the ACLI exemption application, the Department has received several suggestions with respect to any exemption that may result from the Department's consideration of the ACLI request. While expressing general endorsement for the exemption requested by the ACLI with respect to the operation of entities that are deemed to hold plan assets under section 2510.3–101(f) as a result of an insurance company general account investment, one commenter specifically focused on the impact of the *Harris Trust* decision on a number of exemptions previously granted by the Department for the operation of asset pool investment trusts that issue asset-backed, pass-through certificates to plans.

PTE 83–1 (48 FR 895, January 7, 1983) provides conditional relief for the operation of certain mortgage pool investment trusts and the acquisition and holding by plans of certain mortgage-backed pass-through certificates evidencing interests therein. The Department also granted a large number of individual exemptions (e.g., PTE 89–88 [54 FR 42581, October 17, 1989]), each of which provides substantially identical relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-based pass-through certificates representing interests in those trusts (collectively, the Underwriter Exemptions).

PTE 83–1 and the Underwriter Exemptions are conditioned, among other things, upon the certificates purchased by plans not being subordinated to other classes of certificates issued by the same trust. The commenter further noted that, in a typical asset pool investment trust, one or more classes of subordinated certificates are often issued. Underwriters and issuers will sell senior certificates to plans in reliance on PTE 83–1 and the Underwriter Exemptions, but will not knowingly sell any of the subordinated certificates to plans. Thus, the Above-described exemptions provide relief for the operation of a pool that sells senior certificates to plans, but provide no relief for the same acts of the pool trustee and servicer if plans purchase subordinated certificates issued by the same trust.

The commenter stated that life insurance companies have been significant purchasers of subordinated certificates. The *Harris Trust* decision raises the potential for servicers and trustees of pools to be subject to excise taxes and civil penalty liability for the same acts involving the operation of trusts which would be exempt if the certificates were not subordinated. Accordingly, the commenter believes that exemptive relief is especially appropriate in situations where insurance company general account investments in subordinated classes of certificates causes plan ownership of such classes to equal or exceed 25 percent.[8] In support of this request for specific relief, the commenter provided the following reasons: (1) asset pool investment trusts are fixed pools, the assets of which are generally not subject to change once the certificates are sold; (2) the pool sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited and are governed by a written pooling and servicing agreement that is available to investors prior to purchasing a certificate; (3) the assets in the trusts represent secured obligations; and (4) trustees of asset pool investment trusts must be independent of the pool sponsors. Moreover, the commenter argued that the fact that the certificates acquired by a general account are subordinated should not preclude the Department from providing exemptive relief since the certificates will have been analyzed by insurance company purchasers, who are presumptively sophisticated investors.

The Department believes that the commenter's recommendation has merit and has determined to propose exemptive relief on its own motion. Section III of the proposal would provide relief from sections 406(a), 406(b), and 407(a) of ERISA for the operation of asset pool investment trusts in which the insurance general account has an interest as a result of the acquisition of subordinated certificates.[9] The proposal requires that the conditions of either PTE 83–1 or an applicable Underwriter Exemption be met other than the requirements that the certificates acquired by the general account not be subordinated and receive a rating that is in one of the three highest generic rating categories from an independent rating agency. In addition, the Department has proposed additional relief for the operation of such trusts where a plan acquired subordinated certificates in a transaction that was not prohibited or otherwise satisfied the conditions of PTE 75–1. The department has proposed this exemption in recognition that no relief would be available for the operation of a trust if a plan purchased subordinated certificates in a transaction that was not prohibited (or was otherwise covered by PTE 75–1) and the underlying assets of the trust includes plan assets under the analysis adopted in the *Harris Trust* decision as a result of the application of the significant participation test under the plan asset regulation (section 2510.3–101(f)) to the general account's investment in such subordinated certificates.

Section IV contains general conditions which are applicable to all transactions described in sections I and II of the proposed exemption. Transactions must be at least as favorable to the insurance company general account as arm's-length transactions between unrelated parties. The proposal would also require that the transaction not be part of any agreement, arrangement, or understanding designed to benefit a party in interest. Lastly, the party in interest entering into the transaction cannot be the insurance company, any pooled separate account of the insurance company, or any affiliate of the insurance company.

*General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

[8] In this regard, see 29 CFR 2510.3–101(f) for a description of the "significant participation test" contained in the plan assets regulation.

[9] The Department notes that Section I of the proposed exemption provides relief for the acquisition, sale and holding of asset-backed pass-through certificates representing a beneficial ownership interest in a pool of obligations.

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of the participant and beneficiaries;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the face that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

*Written Comments and Hearing Requests*

All interested persons are invited to submit comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

**Proposed Exemption**

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990).

*Section I—Basic Exemption.* The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in section IV are met.

(a) *General Exemption.* Any transaction between a party in interest with respect to a plan and an insurance company general account, in which the plan has an interest as a contractholder, or any acquisition or holding by the general account of employer securities or employer real property, if at the time of the transaction, acquisition or holding, the amount of the reserves for the contract(s) held by or on behalf of the plan, (determined under section 807(d) of the Code) together with the amount of the reserves for the contracts held by or on behalf of any other plans (determined under section 807(d) of the Code) maintained by the same employer or (affiliate thereof as defined in section V(a)(1)) or by the same employee organization in the general account do not exceed 10% of the total of all liabilities of the general account.

(b) *Excess Holdings Exemption for Employee Benefit Plans.* Any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through an insurance company general account, if:

(1) The acquisition or holding contravenes the restrictions of section 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by an insurance company general account in which the plan has an interest; and

(2) The percentage limitation of paragraph (a) of this section is met.

*Section II—Specific Exemptions* (a) *Transactions with persons who are parties in interest to the plan solely by reason of being certain service providers or certain affiliates of service providers.* The restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction to which the above restrictions or taxes would otherwise apply solely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan as a result of providing services to an insurance company general account in which the plan has an interest as a contractholder (or as a result of a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H), or (I) of the Code), if the applicable conditions set forth in section IV are met.

(b) *Transactions involving place of public accommodation.* The restrictions of sections 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by an insurance company general account, to a party in interest with respect to a plan, that has an interest as a contractholder in the insurance company general account, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

*Section III—Specific Exemption for Operation of Asset Pool Investment Trusts.* The restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust in which an insurance company general account has an interest as a result of its acquisition of certificates issued by the trust, provided:

(1) The trust is described in Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) or in one of the Underwriter Exemptions (as defined in section V(g) below);

(2) The conditions of either PTE 83–1 or the relevant Underwriter Exemption are met, except for the requirements that:

(A) the rights and interests evidenced by the certificates acquired by the general account are not subordinated to the rights and interests evidenced by other certificates of the same trust; and

(B) the certificates acquired by the general account have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P), Moody's Investor's Service, Inc. (Moody's), Duff & Phelp's Inc. (D&P), or Fitch Investors Service, Inc. (Fitch).

Notwithstanding the foregoing, the exemption shall apply to a transaction described in this section III if: (i) a plan acquired certificates in a transaction that was not prohibited, or otherwise satisfied the conditions of Part II or Part III of PTE 75–1 (40 FR 50845, October 31, 1975), (ii) the underlying assets of a trust include plan assets under section 2510.3–101(f) of the plan assets regulation with respect to the class of certificates acquired by the plan as a result of an insurance company general account investment in such class of certificates, and (iii) the requirements of this section III (1) and (2) are met, except that the words "acquired by the general account" in section III(2) (A) and (B) should be construed to mean "acquired by the plan".

*Section IV—General Conditions.* (a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the insurance company, the terms of the transaction are at least as favorable to the insurance company

general account as the terms generally available in arm's length transactions between unrelated parties.

(b) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.

(c) The party in interest is not the insurance company, any pooled separate account of the insurance company, or an affiliate of the insurance company.

*Section V—Defintions.* For the purpose of this exemption:

(a) An "affiliate" of a person means—

(1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee (including, in the case of an insurance company, an insurance agent thereof, whether or not the agent is a common law employee of the insurance company), or relative of, or partner in, any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "employer securities" means "employer securities" as that term is defined in Act section 407(d)(1), and the term "employer real property" means "employer real property" as defined in Act section 407(d)(2).

(d) The term "insurance company" means an insurance company authorized to do business under the laws of more than one state.

(e) The term "insurance company general account" means all of the assets of an insurance company that are not legally segregated and allocated to separate accounts under applicable state law.

(f) The term "party in interest" means a person described in Act section 3(14) and includes a "disqualified person" as defined in Code section 4975(e)(2).

(g) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or sister.

(h) The term "Underwriter Exemption" refers to the following individual Prohibited Transaction Exemptions (PTEs)—

PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–39, 56 FR 33473 (July 22, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–6, 58 FR 07255 (February 5, 1993); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994) and any other exemption providing similar relief to the extent that the Department expressly determines, as part of the proceeding to grant such exemption, to include the exemption within this definition.

(i) For purposes of this exemption, the time as of which any transaction, acquisition, or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or acquisition made, on or after January 1, 1975, or any renewal that requires the consent of the insurance company occurs on or after January 1, 1975, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the securities or property so acquired. This exemption also applies to any transaction or acquisition entered into or renewed, or holding commencing prior to January 1, 1975, if either the requirements of this exemption would have been satisfied on the date the transaction was entered into or acquisition was made (or on which the holding commenced), or the requirements would have been satisfied on January 1, 1954 if the transaction had been entered into, the acquisition was made, or the holding had commenced, on January 1, 1975. Notwithstanding the foregoing, this exemption shall cease to apply to a transction or holding exempt by virtue of section I(a) or section I(b) at such time as the interest of the plan in the insurance company general account exceeds the percentage interest limitation contained in section I(a), unless no portion of such excess results from an increase in the assets allocated to the insurance company general account by the plan. For this purpose, assets allocated do not include the reinvestment of general account earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by an insurance company general account which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term "reserves" has the same meaning as the term "life insurance reserves" as described in section 816(b) of the Code.

*Section VI—Effective date.* If granted, the exemption would be effective January 1, 1975.

Signed at Washington, DC, this 17th day of August, 1994.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 94–20511 Filed 8–19–94; 8:45 am]

BILLING CODE 4510–29–M

## Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until noon, Thursday, September 8, 1994, in Suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the September 8 meeting is to have a hearing on and discussion of health care reform and the Employee Retirement Income Security

Act of 1974, as amended (ERISA). The work group will also take testimony and/or submission from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before September 6, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1994.

Signed at Washington, D.C. this 16th day of August, 1994.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 94–20530 Filed 8–19–94; 8:45 am]

BILLING CODE 4510–29–M

## Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1:00 p.m. until 3:30 p.m., Thursday, September 8, 1994, in Suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure requirements for employee benefit plans covered by ERISA.

The purpose of the September 8 meeting is to have the work group interact with a panel of officials, representing employers, regarding the summary plan description, summary annual report and individual statements. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before September 6, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1994.

Signed at Washington, D.C. this 16th day of August, 1994.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 94–20531 Filed 8–19–94; 8:45 am]

BILLING CODE 4510–29–M

## Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12:00 noon, Friday, September 9, 1994, in Suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the September 9 meeting is to take testimony regarding five areas of defined contribution plans, i.e., the role of the trend toward participant self-directed investments in determining benefit levels; the impact of the current regulatory scheme on benefit levels for defined contribution plans in general and 401(k) plans in particular; from a retirement policy perspective, the level of benefits provided by defined contribution plans in general and 401(k) plans in particular; mandatory employer contributions to defined contribution plans as a possible source of increase in the overall retirement income for most employees; the impact of increased educational efforts on benefit levels; and the impact of increased disclosure on benefit levels. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before September 6, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1994.

Signed at Washington, D.C. this 16th day of August, 1994.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 94–20532 Filed 8–19–94; 8:45 am]

BILLING CODE 4510–29–M

## Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, September 9, 1994, in Suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

The purpose of the Eighty-Sixth meeting of the Secretary's ERISA Advisory Council, which will be held from 1:00 p.m. until 3:30 p.m., is to hear reports on the status of the three work groups efforts and conduct any other business that may come before the Council. The Council has established three working groups this year to consider healthcare reform, reporting and disclosure and defined contribution plans. The Council will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting twenty (20) copies on or before September 6, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1994.

Signed at Washington, D.C. this 16th day of August, 1994.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 94–20533 Filed 8–19–94; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (94–065]**

### NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

**DATES:** Tuesday, September 6, 1994, 8:30 a.m. to 5 p.m.; and Wednesday, September 7, 1994, 8:30 a.m. to 12:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Room MIC–6, 300 E Street, SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sam L. Pool, Code SD, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 713–483–7109.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—OLMSA Overview and Strategic Planning
—Russian Programs/Space Station
—Aerospace Medicine and Occupational Health Division Report
—Life and Biomedical Sciences and Applications Division Report
—Program Integration and Applications
—Subcommittee Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 16, 1994.

**Danalee Green,**

*Chief, Management Controls Office, National Aeronautics and Space Administration.*

[FR Doc. 94–20522 Filed 8–19–94; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–424 and 50–425]**

### Georgia Power Company, et al; Notice of 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 Nos. NPF–68 and NPF–81 issued to Georgia Power Company, Ogelthorpe Power Corporation Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee) for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendment would revise the values of Z and S for the Pressurized Pressure-Low and -High reactor trip setpoints (Technical Specification Table 2.2–1, Functional Units 9 and 10, respectively) to allow the use of alternate types of pressure transmitters.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the allowances Z and S in Technical Specification Table 2.2–1 for the Pressurizer Pressure-Low and -High trip setpoints (Table 2.2–1, Functional Units 9 and 10) to allow the use of Tobar, Veritrak, or Rosemount pressure transmitters. Also, the corresponding values of Z and S for the Pressurizer Pressure-Low setpoint for safety injection actuation (Table 3.3–3, Functional Unit 1d) are bounding for these pressure transmitters. The allowances for Z and S are not assumed in any of the initiating events for the accident analyses. Therefore, the probability of any accident previously evaluated will not be affected by the proposed changes. Furthermore, the setpoints, allowable values, and total allowances are not affected. Since the total allowances are not affected, it is ensured that the safety analysis limits for the trips are not affected. Therefore, the proposed change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The safety function provided by the reactor trips and safety injection actuation and the manner in which the plant is operated are not affected. The setpoints, allowable values, and total allowances are not affected. Since the total allowances are not affected, it is ensured that the safety analysis limits for the trips are not affected. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

For both the reactor trips and safety injection actuation, there are no changes to the setpoints. The total allowance for each setpoint is the difference between the safety analysis limit and the setpoint. Since the total allowances are not affected, there are no changes to the safety analysis limits. Therefore the proposed change will not involve a reduction in 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville 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 September 21, 1994, 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 Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. 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 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 Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arther H. Domby, Troutman Sanders, NationsBank Plaza, 600 Peachtree Street, NE., Atlanta, Georgia 30308, 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 amendments dated June 24, 1994, 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 Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 16th day of August, 1994.

For the Nuclear Regulatory Commission.

**Louis Wheeler,**

*Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–20516 Filed 8–19–94; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 8–10, 1994, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland.

**Thursday, September 8, 1994.**

*8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this section, the Committee will discuss priorities for preparation of ACRS reports.

*8:45 A.M.–9:45 A.M.: Proposed Generic Letter on Digital Instrumentation and Control (I&C) Systems Retrofits* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Generic Letter on Digital I&C Systems Retrofits. Representatives of the industry will participate, as appropriate.

*9:45 A.M.–10:15 A.M. Proposed Generic Letter on Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the revised calculations for radiological consequences of main steamline break associated with a steam generator with degraded tubes.

*10:30 A.M.–11:30 A.M.: Proposed Revisions to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors"* (Open)—The Commitee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute (NEI) regarding the proposed revisions to Appendix J to 10 CFR Part 50.

*11:30 AM–12:15 P.M.: Preparation for Meeting with the NRC Commissioners* (Open)—The Committee will discuss items scheduled for discussion during the meetinng with the NRC Commissioners.

*1:30 P.M.–3:00 P.M.: Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners to discuss items of mutual interest.

*3:15 P.M.–4:45 P.M.: Regulatory Analysis Guidelines* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final version of the Regulatory Analysis Guidelines document. Representatives of the industry will participate, as appropriate.

*4:45 P.M.–5:30 P.M.: Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

*5:30 P.M.–6:30 P.M.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

**Friday, September 9, 1994**

*8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:35 A.M.–10:15 A.M.: Proposed Final Version of NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final version of NUREG–1465. Representatives of the industry will participate.

*10:30 A.M.–12:00 Noon: Vessel Head Penetration Cracking* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding the issues associated with the vessel head penetration cracking.

*1:00 P.M.–2:00 P.M.: Generic Letter on Intergranular Stress Corrosion Cracking of Core Shrouds in BWR Plants* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Generic Letter on Core Shroud Cracking in BWR Plants.

Representatives of the industry will participate, as appropriate.

*2:00 P.M.–2:30 P.M.: Future ACRS Activities* (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

*2:30 P.M.–2:45 P.M.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

*3:00 P.M.–4:30 P.M.: Selection of New ACRS Members* (Open/Closed)—The Committee will discuss qualifications of candidates nominated for appointment to the ACRS.

A portion of this session will be closed to discuss matters the release of which would constitute a clearly

unwarranted invasion of personal privacy.

*4:30 P.M.–6:30 P.M.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

**Saturday, September 10, 1994**

*8:30 A.M.–11:30 A.M.: Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

*11:30 A.M.–12:00 Noon: Subcommittee Activities* (Open)—The Committee will hear reports from cognizant Subcommittee Chairmen regarding the activities of Subcommittees.

*12:00 Noon–12:30 P.M.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussions of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2); and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 A.M. and 4:15 P.M. EST.

Dated: August 16, 1994.

**John C. Hoyle,**

*Acting Advisory Committee Management Officer.*

[FR Doc. 94–20513 Filed 8–19–94; 8:45 am]

BILLING CODE 7590–01–M

## Twenty-Second Water Reactor Safety Information Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Twenty-Second Water Reactor Safety Information Meeting will be held on October 24–26, 1994, 8:30 a.m. to 5:00 p.m., in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The annual Water Reactor Safety Information Meeting will focus on new and different work this year including High Burn-up Fuel Behavior. The meeting includes papers and discussions covering the status of research programs. The meeting is international in scope and includes participation by personnel from U.S. Government laboratories, various research firms and independent laboratories, reactor vendors, utilities, universities, and a number of foreign countries. This meeting is sponsored by the NRC and conducted by the Brookhaven National Laboratory.

The preliminary agenda for this year's meeting includes 12 sessions on the following topics; Severe Accident Research, Primary System Integrity, Structural and Seismic Engineering, Advanced Instrumentation and Control Hardware and Software, Aging Research, Products and Applications, Human Factors Research, Thermal Hydraulic Research for Advanced Passive Light Water Reactors, Individual Plant Examination and Probabilistic Risk Assessment and High Burn-Up Fuel Behavior. Mr. James M. Taylor, Executive Director of Operations for NRC will open the meeting and Mr. Pierre Tanguy, Inspector General of Electricite de France will be the guest speaker.

Attendees may register at the meeting or may register in advance by contacting Susan Monteleone, Brookhaven National Laboratory, Department of Nuclear Energy, Building 130, Upton, NY 11973, Telephone (516) 282–7235, or Christine Bonsby, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–5838.

Dated at Rockville, Maryland, this 15th day of August, 1994.

For the Nuclear Regulatory Commission.

**Alois J. Burda,**

*Deputy Director, Financial Management, Procurement and Administration Staff, Office of Nuclear Regulatory Research.*

[FR Doc. 94–20517 Filed 8–19–94; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

## Budget Analysis Branch; Sequestration Update Report

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of Transmittal of Sequestration Update Report to the President and Congress.

**SUMMARY:** Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

**FOR FURTHER INFORMATION CONTACT:**

Anita Chellaraj, Budget Analysis Branch—202/395–3945.

Dated: August 15, 1994.

**John B. Arthur,**

*Assistant Director for Administration.*

[FR Doc. 94–2056 Filed 8–19–94; 8:45 am]

BILLING CODE 3110–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34533; File No. SR–NASD–93–3]

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Partial Accelerated Approval to Amendments to Proposed Rule Change Relating to Limited Partnership Rollup Transactions

August 15, 1994.

### I. Introduction

On February 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 19b–4 thereunder.[2] The proposal subsequently was amended eight times. On April 14, 1993, May 7, 1993, May 13, 1993, May 14, 1993, August 26, 1993, October 21, 1993,[3] April 14, 1994, and July 27, 1994, the NASD filed Amendment Nos. 1, 2, 3, 4, 5, 6, 7 and 8, respectively, to the proposed rule change.[4] The proposed rule change would amend Article III, Section 34 of the Rules of Fair Practice to include rules which prevent NASD members or persons associated with an NASD member from participating in any "limited partnership rollup transaction" (as defined in the proposed rule change) unless the transaction includes certain specified provisions designed to protect the rights of limited partners. The proposed rule change also would amend Article III, Section 34(b)(6) to narrow the scope of transactions in which members are forbidden to receive differential compensation ("Differential Compensation Amendment"). Finally, the proposed rule change would amend Schedule D of the By-Laws ("Schedule D") to prohibit the authorization for quotation on the Nasdaq National Market ("Nasdaq/NM") of any security which results from a covered partnership rollup transaction unless the transaction was conducted in accordance with certain specified procedures designed to protect the rights of dissenting limited partners.

Notice of the proposed rule change, together with the substance of the proposal as amended by Amendment Nos. 1–4, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 32312, May 17, 1993) and by publication in the **Federal Register** (58 FR 29655, May 21, 1993). Seven comment letters were received in response to the Commission release. Three comment letters expressed support for the proposed rule change.[5] One comment letter stated that the proposed rule change should not be adopted "in the absence of a legislative mandate."[6] Three comment letters neither supported nor opposed the proposed rule change but offered suggestions on how to enhance the NASD's rule.[7]

The Rollup Reform Act was enacted on December 17, 1993, as part of the Government Securities Act Amendments of 1993. Section 3(a) of the Rollup Reform Act added subparagraph (12) to Section 15A(b) of the Exchange Act to require that the rules of a registered securities association prevent members of the association from participating in any limited partnership rollup transaction unless the transaction provides procedures to protect certain rights of limited partners. Section 3(c) of the Rollup Reform Act amended Section 15A(b) of the Exchange Act to require that the rules of a registered securities association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association of any security designated by the SEC as a national market system security resulting from a rollup transaction, unless the transaction provides certain rights for limited partners.[8] The NASD subsequently amended the proposed rule change to conform the language of the rule to the Rollup Reform Act.[9]

By this release, the Commission: (i) solicits comment on the Differential Compensation Amendment; (ii) approves the proposed rule change as amended by Amendment Nos. 1–4; and (iii) grants approval on an accelerated basis to Amendment Nos. 5, 6 and 8, and grants approval on an accelerated basis to Amendment No. 7,[10] except for that portion of that Amendment proposing the Differential Compensation Amendment, which the Commission is not approving by this release.[11]

The text of the proposed rule change is available at the Office of the Secretary of the NASD and at the Commission.[12] With respect to the Differential Compensation Amendment, language proposed to be added to Subsections (b)(6)(A) and (B) of Article III, Section 34 is in italics; proposed deletions are in brackets.

**Rules of Fair Practice**

**Article III**

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 19b–4 (1993).

[3] On December 17, 1993, the Limited Partnership Rollup Reform Act of 1993 ("Rollup Reform Act") was enacted.

[4] Amendment No. 1 superseded the original rule filing. Amendment No. 2 amended the rule language and the NASD's Statement of Purpose in response to comments of the Commission staff. Amendment Nos. 3 and 4 made technical changes to the rule. Notice of the proposed rule change (Securities Exchange Act Release No. 32312, May 17, 1993) was then published in the **Federal Register** (58 FR 29655, May 21, 1993). Amendment No. 5 made technical changes to the rule text and responded to the comment letters that the Commission received in response to the publication of the release in the **Federal Register**. Amendment No. 6 made changes to the rule text to address issues of state law addressed in comment letters. Amendment No. 7 amended the rule language to partially conform the rule to the Rollup Reform Act and narrowed the scope of transactions in which members were forbidden to receive differential compensation. Amendment No. 8 amended the rule language to conform the rule to the Rollup Reform Act in all relevant parts and reordered the text of the proposed rule change in accordance with Section 34 of the Rules of Fair Practice.

[5] See letter from Michael B. Pollack, Chairman, Securities Laws and Regulatory Affairs Committee, Investment Program Association ("IPA") to Jonathan Katz, Secretary, SEC dated June 9, 1993; letter from Deborah A. DeMott, Professor of Law, Duke University School of Law ("DeMott") to Jonathan Katz dated June 10, 1993; and letter from John F. Olson and Nicholas S. Hodge, Committee on Federal Regulation of Securities, American Bar Association ("ABA") to Jonathan Katz dated June 23, 1993.

[6] See letter from Joe M. Bridges, President, Kelley Oil Corp. ("Kelley") to Jonathan Katz dated July 6, 1993.

[7] See letter from Gene Oshman, Baker & Botts ("Baker & Botts") to Jonathan Katz dated June 10, 1993; letter from Patricia Magee Daly, Kutak Rock ("Kutak Rock") to Jonathan Katz dated June 11, 1993; letter from James E. Showen, Hogan & Hartson ("Hogan & Hartson") to Jonathan Katz dated November 3, 1993.

[8] Section 3(b) of the Rollup Reform Act added Section 6(b)(9) to the Exchange Act imposing virtually identical requirements upon national securities exchanges. *See* 15 U.S.C. § 78f(b)(9).

[9] See supra n. 4.

[10] Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 5–8 to the proposed rule change. See infra Section V.

[11] The Differential Compensation Amendment would eliminate the definition of "rollup of a direct participation program" contained in Subsections (b)(6)(A) and (B) of Article III, Section 34, which prohibits the receipt of differential compensation in connection with the solicitation of investor votes in rollup transactions, and substitute the term "limited partnership rollup transaction" wherever the term "roll-up of a direct participation program" currently appears in these Subsections. The effect would be to permit NASD members to receive diffential compensation in connection with the solicitation of investor votes in any "roll-up of a direct participation program" that does not also constitute a "limited partnership rollup transaction." See infra Section III.B.1.

[12] The NASD also will publish the text of the proposed rule change in an NASA Notice to Members.

Direct Participation Programs

Sec. 34

* * * * *

(b)

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*Participation in Rollups*

(6)(A) No member or person associated with a member shall participate in the solicitation of votes or tenders from *limited partners* [participants] in connection with a *limited partnership* rollup *transaction* [of a direct participation program or programs] irrespective of the form of the *resulting* entity [resulting from the rollup] (*i.e.*, a partnership, real estate investment trust or corporation), unless [such] any compensation received by the member:

(i) is payable and equal in amount regardless of whether the *limited partner* [participant] votes affirmatively or negatively in the proposed *limited partnership* rollup *transaction*;

(ii) in the aggregate, does not exceed 2% of the exchange value of the newly-created securities; and

(iii) is paid regardless of whether the *limited partners* [participants] reject the proposed *limited partnership* rollup *transaction*.

(B) No member or person associated with a member shall participate in the solicitation of votes or tenders from *limited partners* [participants] in connection with a *limited partnership* rollup *transaction* [of a direct participation program or programs] unless the general partner(s) or sponsor(s) proposing the *limited partnership* rollup *transaction* agrees to pay all solicitation expenses related to the *limited partnership rollup transaction*, including all preparatory work related thereto, in the event the *limited partnership* rollup *transaction* is rejected.

[For purposes of paragraphs (A) and (B), a rollup of a direct participation program shall mean a transaction involving an acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or traded on the Nasdaq System, into another public direct participation program or a public corporation or a public trust.]

* * * * *

## II. Background

During the 1980s, over $150 billion of public limited partnership interests were sold to U.S. investors.[13] Sources have estimated that 11 million investors have purchased limited partnership interests, of which approximately eight million are small investors, with an average investment of about $10,000.[14] Limited partnership interests typically are risky and illiquid, due to the lack of an active trading market for such interests.

*A. Structure of A Limited Partnership*

In the typical publicly-offered limited partnership, a sponsoring organization solicits funds from investors to use in the purchase of real estate, oil and gas facilities, high technology research, or other enterprises. The sponsor usually serves as the general partner and is required to manage the assets and fulfill any obligations to the investors imposed under the terms of the partnership agreement. The investors are the limited partners. A partnership agreement typically will provide for limited partners to receive periodic payments during the term of their investment, a return of their principal, and a specified return or profit and a portion of any additional proceeds upon the liquidation of the partnership assets.

*B. Reasons to Invest in a Limited Partnership*

Investors purchased limited partnerships for several reasons. Perhaps most important, in the case of real estate partnerships prior to the 1986 amendments to the Internal Revenue Code ("1986 Tax Act"), limited partnership investors enjoyed significant tax benefits.[15] Limited partnerships permitted small investors to participate in commercial and multi-family real estate, oil and gas facilities, and other investments previously limited to institutional or other large investors.[16] Investors in limited partnerships were promised that they would realize a return on their investment within a finite period of time. Investors also were promised that sponsors would not realize any return on partnership assets until investors received their share of the profits.

*C. Advantages for partnership sponsors*

Sponsors have a financial incentive to organize limited partnerships for at least two reasons. First, the sponsor/general partner expects to realize a profit on any appreciation of the assets after the limited partners receive their share. Second, the sponsor/general partner derives income on an on-going basis for the management services provided in maintaining and operating the property. The general partner also may receive up-front fees for organizing the limited partnership.

*D. Recent partnership performance*

In the late 1980s, the financial climate for limited partnership deteriorated dramatically. Several factors contributed to limited partnerships' poor performance. The 1986 Tax Act took away any tax benefit for limited partnership investors. Real estate and oil and gas markets also declined precipitously. This, together with a series of other circumstances, caused many general partners to face a decreasing revenue base and a growing number of financial problems.[17] Since January 1, 1985, the number of limited partnership offerings filed with the Commission has decreased substantially each year, from a high of 428 in 1985 to a low of 39 in 1991.[18] Interests in limited partnerships investing in real estate lost some or all of their economic value due to the dramatic decline in real estate values during the late 1980s.

Several consequences flowed from the deteriorating climate for limited partnerships. Many general partners stopped raising new capital altogether. Sales of assets from existing partnerships exceeded any new capital raised, thereby eroding assets under management and significantly reducing general partner management fees.[19] Some general partners responded to their predicament by changing the original partnership agreements and restructuring the limited partnerships by proposing to reorganize or, in many cases, "roll up" existing limited partnership interests into new, publicly-traded securities.

*E. Rollups*

From January 1, 1985 to June 30, 1994, approximately 82 limited partnership rollup transactions involving two or more entities were registered with the Commission. These rollups have involved over 1,900 separate limited partnerships with an estimated aggregate value well over seven billion dollars.

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[13] S. Rep. No. 121, 103d Cong., 1st Sess. 4 (1993) ("Senate Report") *citing* testimony of James R. Doty, General Counsel, Commission, "Concerning Limited Partnership Roll-Ups," before the Subcommittee on Energy and Agricultural Taxation, Committee on Finance, United States Senate, July 16, 1991, at 3.

[14] Senate Report, *Supra* No. 13, at 3.

[15] *Id.* at 5.

[16] *Id.*

[17] *Id.*

[18] In 1992, 50 new limited partnership offerings were filed with the Commission. H.R. Rep. No. 21, 103d Cong., 1st Sess. 10(1993) ("1993 house Report").

[19] Senate Report, *supra* n. 12, at 5.

1. Rollup structure

A typical "rollup" will combine several non-traded individual limited partnerships into a single new entity that publicly trades on a national securities exchange or on Nasdaq/NM. This entity generally is an infinite life vehicle which is designed continually to reinvest proceeds from asset sales, unlike the provisions limited partnerships, which are investments with a limited or finite term that, at some point in time, distribute proceeds, if any, to investors. A rollup also can involve the reorganization of a single partnership into a new entity.

2. Benefits of rollups

In some cases, reorganizing non-traded public limited partnerships that have lost substantial value and creating a new publicly-traded, infinite life vehicle can enhance the value of the investments of the limited partners.[20] For example, the new entity may offer investors liquidity previously unavailable, create economies of scale and reduce administrative costs to improve performance, and create broader diversification of assets which will improve investment safety.

3. Criticism of rollup

Critics have said that the vast majority of limited partnership rollups result in the newly-traded security immediately falling to a discount to its net asset value, as cash flow from the stronger partnerships is used to support losses from the weaker partnerships.[21] They further argue that ongoing asset management fees and expenses assessed by the general partners offset, and in fact may exceed, the promised reduced administrative costs.[22] As a result, the limited partners' equity is substantially diluted. One industry witness testified before Congress that, in the large rollup transactions, limited partners have realized, on average, a drop of 45 percent from the exchange value on the first day of trading in their newly issued rollup securities.[23] Congressional testimony also disclosed estimates that these limited partners when taken as a whole have lost approximately $2 billion in equity, while rollup sponsors have earned over $250 million in fees.[24] By one estimate, when compared to original exchange values, investors involved in public limited partnership rollups have experience a decline of approximately 70 percent in limited partner equity.[25]

While investor complaints have been sparked by the enormous declines in the value of the rollup security compared with the "exchange value" stated in the prospectus, rollup sponsors have argued that the stated exchange value is not intended to be the trading price of the security, and thus, such comparisons tend to overstate the magnitude of investor losses.[26] However, rollup disclosure documents generally have proven to be almost incomprehensible and it is likely that sponors did not clearly disclose to investors that the stated exchange value is not intended to be the trading price of the security.[27]

Congressinonal testimony revealed at least three other forms of abuses in connection with rollup transactions. First, financially sound partnerships are merged with partnerships that are experiencing financial difficulty, thereby diluting the interest of the limited partners of the sound partnerships.[28] Second, some general partners have modified the original partnership's fee structure in order to give much larger equity interests or fees to themselves, to the detriment of the limited partners.[29] Finally, when the unattractive terms of the new rolled up security become apparent, the market further discounts the newly traded security, pushing its price even lower.

*F. The Rollup Reform Act*

The seriousness of the problem with rollup disclosure documents was underscored by Commission Chairman Richard Breeden when he stated in testimony before the Senate Banking Committee in the Spring of 1991 that, "I have taken a look at some of the documents filed with us in these roll-up transactions and I would like to meet the person who can understand all of the disclosures in some of those documents." The Committee notes that a disclosure document which the Chairman of the Securities and Exchange Commission has difficulty understanding is likely to prove daunting in complexity to the average small investor in a limited partnership.

As noted above, Section 3(a) of the Rollup Reform Act amended Section 15A(b) of the Exchange Act to require that the NASD rules that promote just and equitable principles of trade include rules to prevent NASD members from participating in any limited partnership rollup transaction that does not provide procedures to protect certain specified rights of limited partners. Such rights include:

(A) The right of dissenting limited partners to:

(i) an appraisal and compensation;

(ii) retention of a security under substantially the same terms and conditions of the original issue;

(iii) approval of the limited partnership rollup transaction by at least 75 percent of the outstanding interests of each participating limited partnership; or

(iv) other rights designed to protect dissenting limited partners;

(B) The right not to have their voting power unfairly reduced or abridged;

(C) The right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

(D) Restrictions on the general partner's conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the general partner's receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

The Rollup Reform Act defines a "dissenting limited partner" as a person who, on the date on which rollup soliciting material is mailed to investors, holds a beneficial interest in a limited partnership that is the subject of a limited partnership rullup transaction and who votes against the transaction and complies with procedures established by the NASD to perfect dissenter's rights.

Section 3(c) of the Rollup Reform Act amended Section 15A(b) of the Exchange Act to require that the rules of a registered securities association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by that association of any security designated by the Commission as a national market system security resulting from a rollup transaction, unless such transaction provides certain rights for limited partners. The rights set forth under this section are identical to those set forth in Section 3(a) for registered securities associations.

## III. Description of Proposed Rule Change and Comments Received

The NASD's proposed rule change would prevent its members from participating in any "limited partnership rollup transaction" as that term is defined in the Rollup Reform

[20] *Id.* at 6.

[21] *Id.*

[22] *Id.*

[23] Liquidity Fund, "Roll-up Performance: Comparison of Exchange Value and Closing Prices, 1st Day, 90 Days, 120 days, Current Market Price," in "Limited Partnership Reorganizations, or 'Roll-ups'," Hearing before the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs, February 27, 1991, S. Hrg. 102–77, page 29.

[24] Senate Report, *supra* n. 12 at 6–7.

[25] *Id.* at 7.

[26] *Id.*

[27] See 1993 House Report, *supra* n. 18, at 12.

[28] Senate Report, *supra* n. 13, at 7.

[29] *Id.*

Act if the transaction does not provide those procedures to protect the rights of limited partners that are mandated by the Rollup Reform Act. The proposed rule change also would narrow the scope of transactions in which members are forbidden to receive differential compensation. Finally, the proposed rule change would prohibit the authorization for quotation on Nasdaq of any security designated by the Commission as a national market system security resulting from a rollup transaction, unless the transaction provides certain rights for dissenting limited partners.

*Proposed Rule Change to Article III, Section 34*

A. Definitions

Subsequent to publication of notice of the proposed rule change, the NASD proposed to amend the definitions of "dissenting limited partner" and "limited partnership rollup transaction" to be added to Subsection (b)(2)(B).[30]

"*Dissenting Limited Partner*" is defined in new Subsection (b)(2)(B)(iii), in accordance with the Rollup Reform Act, as a person who, on the date on which rollup soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction and who votes against the transaction and complies with procedures established by the NASD to assert dissenters' rights, except that for purposes of an exchange or tender offer, a person must file an objection in writing with the party responsible for tabulating votes or tenders during the period in which the offer is outstanding.[31]

"*Limited Partnership Rollup Transaction*" is defined in new Subsection (b)(2)(B)(vii), in accordance with the Rollup Reform Act, as a transaction involving the combination or reorganization of limited partnerships, either directly or indirectly, where some or all investors in the limited partnerships receive new securities or securities in another entity. The definition provides exceptions for certain kinds of private transactions or other transactions which do not require the application of the protections of the Exchange Act. In addition, the term "limited partnership rollup transaction" is defined to include the reorganization of a single limited partnership, directly or indirectly, in which some or all investors receive new securities or securities in another entity, if the transaction meets certain specified criteria in the Rollup Reform Act. The definition covers both transactions in which securities received in single or multiple partnership rollups are received directly, and transactions in which securities are received indirectly through a step transaction.[32]

*Exclusions* The definition of "limited partnership rollup transaction" also incorporates six exclusions, in accordance with the Rollup Reform Act. A transaction will not be deemed to be a limited partnership rollup transaction of it: (1) involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate; (2) involves only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged in accordance with the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership; (3) involves only securities to be issued or exchanged that are not required to be and are not registered under the Securities Act of 1933 ("Securities Act"); (4) involves only issuers that are not required to register or report under Section 12 of the Exchange Act, both before and after the transaction; (5) involves the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, except those types of transactions as the Commission may by rule deem to fall within the definition of "limited partnership rollup transaction," if: (a) such action is approved by not less than 66⅔ percent of the outstanding units of each of the participating limited partnerships; and (b) as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting limited partnership agreements; or (6) involves a transaction, except as the Commission may by rule deem to fall within the definition of "limited partnership rollup transaction," in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective by the Commission under Section 11A of the Exchange Act before the date of enactment of the Rollup Reform Act, if: (a) such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and (b) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

B. Participation in Rollups

The Commission is soliciting comment on the Differential Compensation Amendment. As noted above, the Differential Compensation Amendment would amend Subsection (b)(6) to: (i) limit the scope of the prohibition upon receipt of differential compensation to transactions constituting "limited partnership rollup transactions" instead of transactions constituting "rollups of direct participation programs";[33] and (ii) prohibit the participation of members and persons associated with members in a limited partnership rollup transaction unless the transaction includes provisions designed to protect the rights of limited partners.[34]

1. *Receipt of Differential Compensation in DPP Rollups Not Also Constituting Limited Partnership Rollup Transactions.* Congress began to focus on investor protection, fairness and disclosure issues related to rollup transactions in 1990. One of the early abuses on which Congress focussed was payment of compensation to soliciting broker-dealer only when an investor

[30] The terms "cash available for distribution," "cash flow," "limited partner," "limited partnership," "management fee," "solicitation expenses," and "transaction costs" are adopted as published in the notice of the proposed rule change. *See* Securities Exchange Release No. 32312, *supra* n. 4, 58 FR 29655, 29655–56.

[31] By defining "dissenting limited partner" to mean a person who is a holder of the limited partnership interests on the date on which soliciting material is mailed, persons who buy limited partnership interests after that date are prevented from asserting dissenters' rights. These persons are on notice of the proposed rollup transaction when they purchase their limited partnership interests and, therefore, do not need the same type of protections granted to existing limited partners.

[32] See discussion of umbrella partnership real estate investment trusts ("UPREITs") *infra* n. 50 and accompanying text.

[33] Section 34(a)(2) defines "direct participation program" as "a program which provides for flow-through tax consequences *regardless of the structure of the legal entity or vehicle for distribution.* . . ." (emphasis added). By contrast, new Subsection (b)(2)(B)(vi) defines "limited partnership" as a DPP *organized as a limited partnership.* (emphasis added).

[34] Subsection (b)(6)(C) thus would regulate a member's solicitation activities, advisory activities, or the writing of a fairness opinion. Subsections (b)(6)(A) and (B) currently regulate only a member's receipt of differential compensation in the solicitation of votes or tenders.

voted in favor of a rollup transaction. The Rollup Reform Act requires the NASD to adopt rules proscribing the receipt by members of "differential compensation" when soliciting votes for a limited partnership rollup transaction. The Commission previously had approved an NASD rule regulating its members' receipt of differential compensation in DPP rollups.[35]

Current Subsections (b)(6) (A) and (B) were adopted in that rule change to regulate the participation of members in the solicitation of votes or tenders from participants in a rollup of a DPP. The NASD stated in Amendment No. 7 that at the time of its adoption, the SEC and NASD were aware that the definition of "rollup of a direct participation program" was broader than the definition of "limited partnership rollup transaction" then pending in Congress (and proposed to be amended in this proposed rule change) because it applies to "direct participation programs" rather than "limited partnerships" and does not include all of the exclusions that are available from the "limited partnership rollup" definition.[36]

The NASD continues to be concerned that it may be confusing to have two definitions of a rollup transaction which are different in scope set forth in Subsection 34(b).[37] Therefore, the NASD is proposing to amend Subsections (b)(6) (A) and (B) by replacing the special rollup definition in those Subsections with the new definition of "limited partnership rollup transaction" and by substituting the term "limited partnership rollup transaction" wherever the term "rollup of a direct participation program" currently appears. The NASD notes that the result of this amendment would be to limit the scope of these Subsections as they would not longer be applicable to almost any DPP rollup, but only to "limited partnership rollup transactions" as defined in the proposed rule change.

The Commission notes that its rules governing roll-up transactions[38] apply to transactions that involve the combination or reorganization of one of more finite-life limited partnerships or similar entities. The Commission is soliciting comment from interested persons concerning the potential impact of the Differential Compensation Amendment on the investing public.

*2. When a Limited Partnership Rollup Transaction is Presumed Not to be Unfair or Unreasonable.* Pursuant to new Subsection (b)(6)(C)(i), the NASD proposes to define a series of circumstances with respect to limited partnership rollup transactions which are presumed not to be unfair or unreasonable. In accordance with the Rollup Reform Act, it is presumed not to be unfair or unreasonable if dissenting limited partners are offered one of the following: an appraisal and compensation, retention of a security with substantially the same terms and conditions as the original limited partnership, approval of the rollup transaction by not less than 75 percent of the outstanding units of each participating limited partnership, or other comparable rights designed to protect dissenting limited partners. Protections for limited partners also include the right of limited partners not to have their voting power unfairly reduced, the right of limited partners not to bear unfair costs associated with a rollup transaction that is rejected, and certain restrictions on abusive changes in management fees and compensation. As noted above, dissenters' rights may be asserted only by a person who, on the date that rollup soliciting material is mailed to investors, is a holder of a beneficial interest in the limited partnership that is the subject of the rollup. The proposed rule change would require a transaction constituting a "limited partnership rollup transaction" to include one of the provisions set forth in Subsections (b)(6)(C)(i) a., b., or c., discussed below.

*a. Compensation Based on Appraisal:* New Subsection (b)(6)(C)(i)a. provides that dissenting limited partners must receive compensation based on an appraisal made by an independent appraiser, unaffiliated with the sponsor or general partner of the program. The appraisal provided should consist of an accurate measure of the present financial value of the dissenting investor's ownership interest in the underlying assets of the limited partnership.

Forms of compensation based on appraisal may include cash, secured or unsecured debt instruments, or freely-tradable securities. Subsection (b)(6)(C)(i) imposes several conditions upon the issuance of debt instruments to ensure that the debt issued is equivalent in value to the cash payment and, if readily marketable, would likely trade in an aftermarket at such value.[39] This is intended to prevent dissenting investors from being forced to accept debt instruments which, reflecting their below-market value, would immediately trade at a substantial discount.

Freely-tradable securities may be utilized as compensation only if issued by a company which has been listed on a national securities exchange or traded on the Nasdaq Stock Market prior to the transaction. The number of freely-tradable securities offered in return for partnership interests would be determined in relation to the average last sale price of the securities in the 20-day period following the date of the meeting at which the vote on the rollup occurs.[40] If the issuer of the freely-tradable securities and the sponsor or general partner are affiliated (*i.e.*, if it receives any material compensation from the issuer or its affiliates in conjunction with the rollup transaction or the purchase of the general partner's interest), and the securities issued as compensation are new securities, such securities must not represent more than 20% of the issued and outstanding securities of that class after issuance. The 20% limitation on the amount of securities offered as compensation by an affiliate helps to establish a threshold below which significant dilution could be presumed not to have not occurred.

*b. Receipt of a Security With Substantially the Same Terms and Conditions:* New Subsection (b)(6)(C)(i)b. provides that dissenting limited partners may receive or retain a

[35] See Securities Exchange Act Release No. 29582 (Aug. 19, 1991), 56 FR 42095 (Aug. 26, 1991) (approving SR-NASD-91-24).

[36] But see H.R. Rep. No. 254, 102d Cong., 1st Sess. 95 (1991), which proposed to define "partnership" to include "such other entity having a substantially economically equivalent form of ownership instrument as the Commission determines, by rule consistent with the purposes of [the Limited Partnership Rollup Reform Act of 1991], to include within this definition."

[37] But see *e.g.*, Fryer, A Rollup Update 6 (Practicing Law Institute Real Estate Law and Practice Course Handbook No. 400, 1994):

In September 1991, in Notice to Members 91-56, the NASD adopted rules which restrict differential compensation in connection with the "rollup of a direct participation program." The term "rollup of a direct participation program" is a broader concept than "limited partnership rollup transactions" and accordingly the limitations in the receipt of compensation and the allocation of expenses which is addressed in this earlier release will apply even if the transaction is not considered a "limited partnership rollup transaction."

[38] See Items 901-15 of Regulation S-K, 17 CFR 229.901-915 (1993).

[39] All debt instruments must provide for a trustee and an indenture, and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets of the entity. All debt instruments must provide the holders with a market rate of interest equal to at least 120% of the applicable federal rate and have a term not longer than 8 years. Unsecured debt instruments may be used only when the entity issuing the debt has a limitation on total leverage not greater than 70% of the appraised value of its assets.

[40] In response to a comment by the ABA, the NASD clarified that the "freely-tradable securities" referred to in Subsection (b)(6)(C)(i)a.4. would be valued at a 20-day period "following the date of the meeting at which the vote on the limited partnership rollup occurs. The 'vote' referred to may be a vote, consent, or authorization." See Amendment No. 5.

security with substantially the same terms and conditions as the original issue if certain conditions are met. Retention of a security under the same terms and conditions as the original issue means the provision of a security that has the same characteristics as the dissenting limited partners' original limited partnership interest.

*c. Comparable Rights: Supermajority Approval, Review by Independent Committee, and Other Comparable Rights:* New Subsection (b)(6)(C)(i)c. permits members and persons associated with members to participate in a limited partnership rollup transaction as long as the transaction includes "other comparable rights" provisions designed to protect the rights of limited partners. This Subsection is intended to provide flexibility for sponsors and general partners in structuring rollups, while at the same time providing protections for limited partners. "Comparable rights" may include the right to supermajority approval of the transaction, the right to review of the transaction by an independent committee, or such other rights as the NASD deems comparable.

*(i) Supermajority Approval.* General partners will not be required to provide the right of compensation, as provided in new Subsection (b)(6)(C)(i) where at least 75% of the outstanding units of each of the individual limited partnerships participating approve the rollup transaction. Any limited partnership that fails to reach the 75% threshold must be excluded from the rollup transaction. The proposed rule change, however, would permit a limited partnership rollup transaction to be consummated even though individual partnerships did not approve the transaction.

*(ii) Review by Independent Committee.* The proposed rule change relating to review by an independent committee will require that the committee: (1) Be approved by a majority of the outstanding securities of each participating limited partnership; (2) have access to the books and records of the partnership; (3) prepare a report to the limited partners that are the subject of the rollup presenting its findings and recommendations, including any minority views; (4) have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, but not the authority to approve the transaction; (5) deliberate for a period no longer than 60 days unless unanimously agreed upon by the members of the independent committee or if approved by the NASD; (6) may be compensated and reimbursed by the partnerships subject to the limited partnership rollup transaction and have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense; and (7) be entitled to indemnification to the maximum extent permitted by law from the general partners, sponsors, limited partnerships, and rolled-up entities against claims, causes of action or lawsuits initiated by any party in interest, including limited partnerships or limited partners, related to any action or decision made in furtherance of their responsibilities.

*(iii) Other Comparable Rights.* Comparable rights for dissenting limited partners are not limited to supermajority approval or the establishment of an independent committee, but may include any other comparable right proposed by general partners or sponsors, provided that the general partners or sponsors demonstrate to the satisfaction of the NASD, or if the NASD determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.[41]

*3. When a Rollup Transaction is Presumed to be Unfair or Unreasonable.* Regardless of compliance with Subsection (b)(6)(C)(i), a limited partnership rollup transaction will be presumed to be unfair or unreasonable, pursuant to new Subsection (b)(6)(C)(ii)[42] if: (1) Certain actions taken by the general partner result in the unfair conversion and valuation of general partner interests in a limited partnership rollup transaction; (2) a limited partnership rollup transaction fails to protect the voting rights of the limited partners; (3) the transaction costs of a rejected limited partnership rollup transaction are unfairly apportioned or allocated; or (4) the payment of fees to general partners in connection with limited partnership rollup transactions are unfair, unreasonable, or inappropriate.

*a. Actions Taken By the General Partner:* New Subsection (b)(6(C)(ii)a. provides that it presumptively unfair and unreasonable for general partners, when determining their interest in the new entity resulting from a limited partnership rollup transaction, to: (1) convert an equity interest for which consideration has not been paid into a voting interest in the new entity if the equity interest was not otherwise provided for in the limited partnership agreement and disclosed to limited partners; (2) fail to follow the valuation methods, if any, in the partnership agreements when valuing their partnership interests;[43] or (3) utilize a projected value of their equity interest rather than the appraised current value of their equity interest when determining their interest in the new entity.

*b. Voting Rights:* New Subsection (b)(6(C)(ii)b. contains four provisions for the protection of investors with respect to voting rights. New Subsection (b)(6(C)(ii)b.1. provides that it is presumptively unfair if the voting rights in the entity resulting from the limited partnerships rollup transaction do not follow the original voting rights of the limited partnerships participating in the transaction. However, the NASD recognizes that certain material changes to voting rights may be necessary to conform disparate rights that may exist among participating partnerships. Material changes may be effected only if the NASD determines that the changes are not unfair or if an independent committee approves such changes.[44]

New Subsection (b)(6(C)(ii)b.2. provides that it is presumptively unfair if a majority[45] of the interests in an entity resulting from a limited partnership rollup transaction is unable to vote to cause the entity to take certain actions which are ordinarily the prerogative of the owners rather than management. Thus, it is presumptively unfair not to permit a vote to amend the limited partnership agreement, articles of incorporation, bylaws, or indenture. It is also presumptively unfair not to permit a vote to dissolve the entity. It is also presumptively unfair not to permit a vote to remove and elect the general

[41] The composition of such independent committee to review proposed alternative comparable rights under this provision may be different than the independent committee formed pursuant to proposed Subsection (b)(6)(C)(i)c.2. Additionally, the criteria utilized by the independent committee to review proposed alternative comparable rights under this provision may differ from that required by the independent committee formed pursuant to proposed Subsection (b)(6)(C)(i)c.2.

[42] Where a limited partnership rollup transaction is determined by NASD staff to include one of the arrangements considered to be unfair or unreasonable, the member bears the burden of rebutting the presumption by demonstrating that the arrangement is not unfair or unreasonable or that the arrangement does not come within one of the enumerated unfair and unreasonable arrangement provisions.

[43] In its comment letter, the ABA pointed out that partnership agreements do not generally contain such valuation provisions. The NASD amended its rule to clarify that it applies to rollups that contain valuation provisions. See Amendment No. 5.

[44] See *supra* n. 41.

[45] The term "majority" refers to a 50%-plus-one vote except as superseded by state law or the partnership agreement which may require a higher standard. See Amendment No. 5.

partners, board of directors, trustee, or similar governing entity. Finally, it is presumptively unfair not to permit a vote to approve or disapprove the sale of substantially all the assets of the entity, without concurrence by the sponsor, general partner(s), board of directors, trustee, or similar governing entity, unless such actions would be inconsistent with state law.[46]

New Subsection (b)(6(C)(ii)b.3. provides that it is presumptively unfair if the sponsor or general partner proposing a limited partnership rollup transaction is not required to provide a document which clearly delineates instructions and procedures of voting against or dissenting from a proposed transaction.

New Subsection (b)(6(C)(ii)b.4. provides that it is presumptively unfair if the general partner or sponsor fails to utilize an independent third party to receive and tabulate all votes and dissents or fails to require the third party to make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs.

*c. Transaction Costs:* Subsection (b)(6(C)(ii)c. provides that it is presumptively unfair if transaction costs of a rejected limited partnership rollup transaction are not apportioned between the general and limited partners in accordance with the final vote as follows: (1) in the case of a limited partnership rollup transaction which is not approved, the general partner or sponsor bears transaction costs in proportion to the total number of abstentions and votes to reject the transaction, and the limited partners bear transaction costs in proportion to the number of votes to approve the transaction; or (2) in the case of a rollup transaction which is approved, but where some individual partnerships do not approve and are not included in the approved transaction, the general partner is required to pay costs on behalf of the limited partnerships who have voted not to approve the transaction.

With respect to allocating total costs for a rejected limited partnership rollup transaction, the NASD believes that subsections (b)(6(B) and (b)(6(C)(ii)d. taken together require the general partner to pay all the solicitation expenses in addition to transaction costs in proportion to the total number of abstentions and votes to reject the transaction. Additionally, limited partnerships which vote to reject and which are not included in a limited partnership rollup transaction which is ultimately consummated, may not be assessed any transaction costs.

*d. Fees of the General Partners:* New Subsection (b)(6(C)(ii)d. protects limited partners against the assessment of fees by a general partner which are unfair, unreasonable, or inappropriate. New Subsection (b)(6(C)(ii)d.1. provides that it is presumptively unfair for general partners to receive or convert unearned management fees discounted to a present value while also proposing to receive new asset-based fees. A similar presumption of unfairness applies if property management fees and other fees are inappropriate, unreasonable, greater than or not competitive with the fees that would be paid to third parties for performing similar services under proposed Subsection (b)(6(C)(ii)d.2. Subsection (b)(6(C)(ii)d.3. provides that substantial and adverse changes in fees are presumed unreasonable if not submitted to and approved by an independent committee.[47]

**Proposed Rule Change to Schedule D**

The NASD is proposing to amend Part I and III to Schedule D to the NASD By-Laws to establish listing standards for Nasdaq/NM securities resulting from a limited partnership rollup transaction, as required by new Section 15A(b)(13) of the Exchange Act. The rule language is the same as that proposed for inclusion in Subsection (b) of Article III, Section 34 of the Rules of Fair Practice with two minor exceptions. When the term "direct participation program" is used in the definition section, a cross-reference is provided to the definition of that term in Article III, Section 34 of the Rules of Fair Practice. In addition, the term "management fee" is modified to refer only to such fees related to a "limited partnership." In comparison, the definition in Article III, Section 34(b) of the Rules of Fair Practice substituted the term "direct participation program" because the term "management fee" is used elsewhere in Article III, Section 34(b) of the Rules of Fair Practice and the definition, therefore, should be applicable to any DPP.[48]

**Application of Proposed Rule Change to UPREITs**

UPREIT transactions have certain general characteristics. A limited partnership or partnerships are consolidated into an operating limited partnership. The consolidation is generally conducted as a private placement. In order to effect a non-taxable exchange, the individual limited partnership interests or the properties are exchanged for the operating limited partnership units.[49] The general partner of the operating limited partnership, a real estate investment trust ("REIT"), issues beneficial interests to investors in exchange for cash to raise capital that will purchase some of the operating partnership units. The operating partnership, in turn, may use the proceeds to pay the debts of the limited partnerships included in the operating partnership. It may use the proceeds for other purposes, such as buying additional properties. The REIT shares may be listed on a national securities exchange or Nasdaq/NM and, thus, reported under a transaction reporting plan. As part of the transaction, the unitholders of the new operating partnership are generally given an open-ended option after one year to redeem their operating partnership units for cash from the REIT. Instead of offering cash, the typical REIT may, at its option, offer unitholders REIT units for the operating partnership units pursuant to a private exchange offering or a registered exchange offering, depending on how the offering is structured. It is, however, optional to the operating partnership unitholders as to whether to exercise the redemption right.

*A. UPREIT Structures*

UPREIT transactions have varying structures. The NASD is currently aware of at least three structures. First, UPREITs can be structured so that both the consolidation of limited partnership interests into the operating partnership and the issuance of REIT shares to investors are effected pursuant to *bona fide* private placement exemptions under Section 4(2) of the Securities Act

[46] In response to several commenters, the NASD amended its rule to make it clear that it would not conflict with or supersede state corporate law. See *infra* n. 54–55 and accompanying text.

[47] See *supra* n. 41.

[48] The new listing criteria for limited partnership rollups are included in new Section 3 to Part III of Schedule D. Current Sections 3 through 7 are redesignated to reflect the addition of new Section 3 and are amended to reference the limited partnership rollup criteria. Proposed Section 8 is amended to permit the NASD to terminate an issue's designation if it no longer complies with the requirements in redesignated Sections 5 and 6 or 7.

[49] Built-in gain is deferred, not eliminated. Also, the exchange of old partnership interests for operating partnership units is not necessarily tax-free under all circumstances. After the proceeds of the public REIT offering are used to pay down debt, if a partner's share of liabilities of the operating partnership is less than the same partner's share of liabilities of the old partnership, the partner will be treated as having received a cash distribution. If the distribution exceeds the adjusted basis in the partner's operating units, the partner will recognize taxable gain. If the old partnerships partly sell and partly contribute property to the operating partnership, partners in the operating partnership may realize phantom income.

("private placement exemption"), after which the operating partnership units may be redeemed for cash or, at the REIT's option, exchanged for REIT shares in a private exchange offering.

A second structure involves the consolidation of limited partners' interests into the operating limited partnership in a registered transaction, with a simultaneous public offering of REIT units. The REIT shares are listed on a national securities exchange or authorized for quotation on Nasdaq/NM and are reported under a transaction reporting plan. The offer by the REIT to the limited partners in the operating partnership to exchange their operating partnership units for REIT shares is effected as a registered exchange offer.

A third structure involves the consolidation of limited partners' interests into the operating limited partnership pursuant to a *bona fide* private placement exemption, along with a public offering of units by the REIT general partner. The REIT is listed on a national securities exchange or Nasdaq/NM. The REIT is thus a reporting company prior to any exchange offer of REIT shares for operating partnership units. The offer by the REIT to the limited partners in the operating partnership to exchange their operating partnership units for REIT shares is effected as a separate *bona fide* private placement with the shares then registered by the REIT for the benefit of new holders through a shelf-registration statement or as a registered exchange offer.

*B. Applicability of the Proposed Rule Change to UPREIT Transactions*

As a result of an understanding reached between the staffs of the NASD and the SEC, the NASD's Corporate Financing Department intends to work closely with the SEC's Division of Corporation Finance to review all direct, indirect and multi-step limited partnership rollup transactions in their entirety, including UPREIT transactions, for an initial determination of whether a transaction constitutes a "limited partnership rollup transaction."

The NASD believes that the first type of UPREIT transaction described above *is not*[50] subject to the proposed rule change where the claim of a private placement exemption for the exchange offer is *bona fide*. Such a transaction does not meet the definition of "limited partnership rollup transaction" because the original limited partners are receiving securities in the operating partnership that are not required to be registered under the Securities Act.

The NASD believes that the second type of UPREIT transaction described above *is* subject to the coverage of the proposed rule change because the transaction viewed in its entirety meets the definition of "limited partnership rollup transaction" and does not qualify for any of the exemptions from the definition.

Regarding the third type of UPREIT transaction described above, the NASD will conduct its review of applicability of the proposed rule change in conjunction with the SEC's review for an initial determination of whether the entire transaction should be reviewed as a roll-up because it is a step transaction that indirectly involves a roll-up.[50] In the case of a valid private placement of operating partnership units followed by a registered exchange of units for REIT shares in a short period of time, the two transactions may be stepped together and therefore subject to full review under the proposed rule change. Another situation where the proposed rule change might be applicable to the third type of UPREIT transaction is if the claim of a private placement for the consolidation into the operating partnership is not *bona fide* and the operating partnership transaction is required to be registered with the Commission and conducted as a public offering at the same time that the public REIT offering occurs. In this instance also, the NASD would review the transaction for compliance with the terms of the proposed rule change.

**Comments Received on Proposed Rule Change**

The Commission received seven comment letters. The comment letters from the IPA, DeMott, and the ABA expressed support for the proposed rule change. One comment letter, from Kelley, stated that the NASD rules should not be adopted "in the absence of a legislative mandate." The comment letters from Baker & Botts, Kutak Rock, and Hogan & Hartson neither supported nor opposed the proposed rules but offered suggestions on how to enhance the NASD's rule.

As noted above, Congress passed the Rollup Reform Act subsequent to the receipt of the comment letters. The Rollup Reform Act rendered moot many of the issues raised by commenters. The significant issues that were raised and not subsequently mooted by the Rollup Reform Act are addressed below. In addition, the NASD also made several technical amendments in response to the comment letters.[51]

*A. Right of Compensation Based on Appraisals*

Kelly noted that some partnerships, *e.g.* oil and gas, already include requirements for a supporting appraisal underlying the exchange value determination. Therefore, according to Kelley, the NASD's requirement that dissenters' rights of compensation be based on appraisal, would give the dissenters the right to a second appraisal which would be "redundant and wasteful."

The NASD has stated that "an appraisal that functions to determine the transaction's exchange value could also be used to determine the value of dissenters's compensation so long as the appraisal is done in a manner consistent with the appropriate industry practice."

Hogan & Hartson argues that the appraisal rights provisions under new Subsection (b)(6)(C)(i) should be clarified to permit one partnership participating in a rollup to offer one type of right while another partnership may offer another type of right, stating that such an option would be satisfactory from a fairness perspective.

New Subsection (b)(6)(C)(i) does not by its terms prohibit structuring a rollup offering such that different rights may be offered to different partnerships involved in the same transaction. Further, the "other comparable rights" provision in Subsection (b)(6)(C)(i)c.3. allows for variations in structuring that, subject to NASD approval, are indeed comparable to rights provided in the proposed rule change, including variations in form as well as substance.

*B. Compensation of Dissenters*

Two commentators[52] expressed concern about the use of "freely-tradable securities" as compensation for dissenting limited partners, pursuant to new Subsection (b)(6)(C)(i)a.

The use of a "freely-tradable security" as compensation is reasonable. The listing standards of the exchanges and of Nasdaq should provide adequate protection against dilution when "freely-tradable securities" are offered as compensation.

One the issue of valuation of the "freely-tradable securities," the ABA voiced concern about the method that the NASD will use to calculate the value of the securities that will be used as compensation. New Subsection (b)(6)(C)(i) provides that the value of the freely-tradable security must be determined in relation to the last sale price "in the 20-day period following the effective date." The ABA noted that

[50] See *supra* n. 32 and accompanying text.

[51] See Amendment No. 5.

[52] See DeMott and Kelley.

the "effective date" must refer to the effective date of the registration statement rather than to the closing of the rollup occurs."[53]

*C. Valuation Provisions*

Subsection (b)(6)(C)(ii)a.2. provides that a rollup is presumed to be unfair if the general partner fails to follow the valuation provision in the limited partnership agreement. The ABA pointed out that partnership agreements do not contain such valuation provisions, and suggested revised language to accommodate such a contingency and permit reliance on "more favorable" valuation provisions than those in limited partnership agreements "if any."

The NASD stated that it does not want to make determinations as to whether a proposed valuation method is more favorable than those contained in limited partnership agreements to which investors have previously agreed. However, the NASD amended its rule to clarify that Subsection (b)(6)(C)(ii)b.1. applies to rollups which contain valuation provisions.

Hogan & Hartson argues that the valuation requirements in new Subsection (b)(6)(C)(ii)a.2. and 3. should be clarified by explanations of how valuation provisions of limited partnership agreements and utilization of current value methodology can be both followed in the event of inconsistency, and requests that the NASD explain the meaning of the terms "current value" and "future value" in new Subsection (b)(6)(C)(ii)a.3.

The NASD believes that the use of a "current value" for evaluating equity interests of the roll-up partnerships when determining the general partner's/sponsor's interest in the new entity is fair because the guesswork involved in arriving at any "future value" estimate may prejudice the limited partners in favor of the general partners, especially if the estimated value is exaggerated. However, the NASD also believes that the valuation of partnership interests should be appropriate to the particular industry, and that is permissible, for example, to interpret "current value" on a "going concern" or "liquidation" basis.

With regard to Subsection (b)(6)(C)(ii)a.2., the NASD generally believes that the fairest valuation method of all is that method which reflects, as much as possible, the original agreement or contract between the general partner/sponsor and limited partners. However, the NASD believes that if the valuation provisions of the existing partnership agreements require a future valuation of general partner interests which would be inconsistent with the proposed rule change's requirement that current value be used, then the requirement to use current value supersedes the requirement to follow valuation models in the original partnership agreements.

*D. Voting Rights*

When the proposed rule was published in the **Federal Register** the Commission specifically sought comment on any potential conflicts between the NASD's proposal and state contract or corporate law. The Commission received four comment letters concerning a conflict between the voting rights provision of proposed Subsection (b)(6)(C)(ii)b.2. and state corporate law.[54] The NASD amended its rule to make it clear that it would not conflict with or supersede state corporate law. In response to the Commission's concerns and the comment letters received, the NASD amended its rule to make it clear that the rule would not conflict with or preempt state corporate law.[55]

Hogan & Hartson argued that the Rollup Reform Act did not mandate that the NASD impose specific voting rights, especially for the operating partnership in UPREITs, because very few partnership agreements provide for such rights in any case.

The Commission believes that the proposed rule change does not impose specific voting rights. First, as noted above, the rule is drafted in a manner that defers to applicable state law. Second, if the NASD staff determines that a particular voting arrangement is presumptively unfair or unreasonable, the member may nonetheless rebut the presumption if it demonstrates that the arrangement is not unfair or unreasonable or that the arrangement does not come within one of the enumerated unfair and unreasonable arrangement provisions.

*E. Transaction Costs*

New Subsection (b)(6)(C)(ii)c. requires that transaction costs be apportioned according to voting so that, in a rejected rollup transaction, the general partner bears the costs of the transaction in proportion to the total number of rejections and abstentions. the IPA suggested that it was inappropriate to require the general partner to bear the cost of a rejected rollup transaction in proportion to abstentions.[56]

The Commission disagrees. In proposing Subsection (b)(6)(C)(ii)c., the NASD stated that it intended to "encourage general partners to structure a fair transaction that will be approved by limited partners." By placing the transaction costs of a rejected rollup on the general partner or the sponsor, the NASD is imposing the appropriate burden on the general partner or sponsor to structure a rollup in a manner intended to secure as many favorable votes as possible.

*F. Fees to the General Partner*

New Subsection (b)(6)(C)(ii)d. sets forth criteria to use in determining whether fees paid to the general partner in a rollup are presumptively unfair. Subsection (b)(6)(C)(iv)3. provides that changes in fees which are substantial and adverse to limited partners are presumed unreasonable if not submitted to or approved by an independent party. In order to simplify compliance with the terms of Subsection (b)(6)(C)(ii)(4)(C), the IPA suggested that the NASD, in addition to an independent committee, be permitted to approve changes in fees which are substantial and adverse to limited partners.

In its response to this comment the NASD stated that it is not appropriate for the NASD to make a determination to approve fees that are substantial or adverse to the limited partners.

*G. UPREITs*

Hogan & Hartson argues that UPREIT transactions do not trigger the application of the proposed rule change because such transactions either do not come under the definition of "limited partnership rollup transaction," or, conceding the application of the definition, meet the requirements of one or more transactional exemptions from the definition. Hogan & Hartson concludes that the only part of the entire UPREIT transaction under consideration is the potential redemption/exchange of operating units for cash or REIT shares, not the initial consolidation of individual partnership

[53] See Amendment No. 5.

[54] ABA, Baker & Botts, Kelley, and DeMott. The ABA noted that while the NASD's rule conflicts with most state law, it does not conflict with the laws of some states, such as Massachusetts.

[55] Additionally, the term "management" in Subsection (b)(6)(C)(ii)2.C. was replaced with the phrase "general partner, board of directors, trustee, or similar governing entity" to conform with the introductory clause of Subsection (b)(6)(C)(ii)2.C. See Amendment No. 6.

[56] Hogan & Hartson argued that the Rollup Reform Act does not mandate that the general partner or sponsor bear all the costs of a rejected transaction. However, new Subsection (b)(6)(C)(ii)c.1. does not require the general partner/sponsor to bear "all" costs of a rollup transaction that is not approved, but only those costs in proportion to the total number of abstentions and votes to reject the transaction; limited partners bear costs in proportion to the number or votes to approve the transaction.

interests into operating partnership units, nor the initial consolidation in conjunction with the redemption/exchange. Hogan & Hartson argues that the initial consolidation of limited partnership interests into an operating partnership that does not have its shares traded on an exchange or authorized for quotation on Nasdaq/NM does not come within the definition of a limited partnership rollup transaction and, thus, falls outside the purview of the proposed rule change.

The Commission disagrees. UPREIT transactions should not be viewed in discrete stages, as if each stage in the transaction were isolated from any other stage, with no contemplated interrelationship between the partners, promoters, investors and financing plans of the partnership consolidation stage and the partners, promoters, investors and financing plans of the exchange offering stage.

**V. Discussion**

The Commission finds good cause for partially approving Amendments 5–8 on an accelerated basis.[57] As indicated above, the Commission recognizes that the rule change will provide important benefits to investors who may be subject to limited partnership rollup transactions in that the amended proposed rule change will ensure that investors' rights are protected in accordance with the intent of Congress as embodied in the Rollup Reform Act. In addition, the Commission finds that notice in advance of approval of those Amendments intended to conform the proposed rule change with the Rollup Reform Act is unnecessary because the Rollup Reform Act itself has given interested parties constructive notice of pertinent terms of the Amendments. The Commission also finds that, except as noted above, those amendments to the proposed rule change not intended to conform the proposed rule change with the Rollup Reform Act are intended merely to clarify the rule change. The NASD will implement the rule change on November 1, 1994. The Commission believes that accelerated approval will avoid unnecessary delay in requiring members to ensure that they participate in limited partnership rollup transactions only if those transactions provide for fair treatment of limited partnership investors, protect the rights of all limited partners, including dissenting limited partners, and do not contain unfair or unreasonable terms.

The Commission finds that, with the exception of the Differential Compensation Amendment, the proposed rule change is consistent with the provisions of Section 15A(b)(6)[58] of the Exchange Act, which require, in pertinent part, that the rules of a registered securities association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest; the provisions of Section 15A(b)(12)[59] of the Exchange Act, which require the rules of a registered securities association to promote just and equitable principles of trade include rules to prevent members of the association from participating in any limited partnership rollup transaction that does not provide procedures to protect certain specified rights of limited partners; and the provisions of Section 15A(b)(13)[60] of the Exchange Act, which require that the rules of a registered securities association prohibit the authorization for quotation on an automated interdealer quotation system sponsored by the association any security designated by the SEC as a national market system security resulting from a limited partnership rollup transaction, unless such transaction provides certain rights for limited partners. The proposed rule change will restrict member participation in unfair rollup transactions and prohibit inclusion in Nasdaq/NM of any securities resulting from an unfair rollup transaction.

The Rollup Reform Act reflects a brief that partnership rollup transactions, when properly structured, may offer significant benefits to investors and for businesses that have used these structures to raise capital. However, Congress has determined that abusive limited partnership rollup transactions harm investors, undermine investor confidence and threaten capital formation.[61] The proposed rule change will permit rollups to take place but will curtail the abusive practices that have occurred in the past. The proposed rule change is designed to ensure the fairness of partnership rollup to the limited partners by giving dissenters the right to compensation, based on appraisal, rather than being forced into a rollup. In addition the proposed rule change contains provisions which prevent the unfair conversion and valuation of the general partner's interests in a rollup transaction, prevent investors' voting rights from being unfairly reduced or abridged, prevent the limited partners from having to bear an unfair portion of the cost of a transaction that has been rejected, and prevent the payment of fees to general partners in connection with a rollup that are unfair, unreasonable, or inappropriate.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 5–8. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection an copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–93–03 and should be submitted by September 12, 1994.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2)[62] of the Exchange Act, that the proposed rule change SR–NASD–93–3 be, and hereby is approved, except with respect to that portion of Amendment No. 7 that proposes amendments to Subsections (b)(6)(A) and (b)(6)(B) of Article III, Section 34 of the NASD Rules of Fair Practice. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[63]

[FR Doc. 94–20479 Filed 8–19–94; 8:45 am]

BILLING CODE 8010–01–M

[57] The Commission does not find good cause for approving the Differential Compensation Amendment.

[58] 15 U.S.C. § 78*o*–3(b)(6).

[59] 15 U.S.C. § 78*o*–3(b)(12).

[60] *Id.*

[61] Senate Report, *supra* n. 9, at 9.

[62] 15 U.S.C. § 78s(b)(2).

[63] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Hartford Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting at 8:30 a.m. on Monday, September 19, 1994, at 2 Science Park, New Haven, Connecticut 06511 to discuss such matters as may be

presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. JoAnn Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: August 17, 1994.

**Dorothy A. Overal,**

*Acting Assistant Administrator, Office of Advisory Councils.*

[FR Doc. 94–20537 Filed 8–19–94; 8:45 am]

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# Sunshine Act Meetings

Federal Register
Vol. 59, No. 161
Monday, August 22, 1994

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).

## SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 22, 1994.

A closed meeting will be held on Thursday, August 25, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A), and (10) and 17 CFR 200.042(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 25, 1994, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andre Owens (202) 942–0800.

Dated: August 17, 1994.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–20622 Filed 8–18–94; 11:00 am]

BILLING CODE 8010–01–M

federal register

Monday
August 22, 1994

Part II

# State Justice Institute

Grant Guideline; Notice

## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.

**ACTION:** Proposed grant guideline.

**SUMMARY:** This Guideline sets forth the proposed administrative, programmatic, and financial requirements attendant to Fiscal Year 1995 State Justice Institute grants, cooperative agreements, and contracts.

**EFFECTIVE DATE:** The Institute invites public comment on the Guideline until September 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $11½ million is available for award in FY 1995.

### Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most pressing needs of the State courts. The Institute accordingly offers six different types of grants, each of which responds to an important need of the State judiciaries. The types of grants available in FY 1995 and the funding cycles for each program are provided below:

*Project Grants*

These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. With limited exceptions (see sections II.B.2.b.i. and II.C.), project grants are intended to support innovative projects of national significance. As provided in chapter V. of the Guideline, project grants, with limited exceptions, may not exceed $200,000 a year. Applicants must ordinarily submit a concept paper (see chapter VI.) and an application (see chapter VII.) in order to obtain a project grant.

As indicated in section VI.C., the Board may make an "accelerated" project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application.

The FY 1995 mailing deadline for project grant concept papers is November 23, 1994. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1995 funding cycle will be substantially similar to the FY 1994 cycle: the Board will meet in early March, 1995 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The first exception to this schedule pertains to proposals to follow up on the National Conference on Mass Tort Litigation to be in November, 1994. Applicants interested in participating in this special round of funding may submit concept papers proposing projects addressing the findings and recommendations of that conference by March 10, 1995. The papers will be considered by the Board at its meeting in April, 1995. Invited applications will be reviewed at the Board's July, 1995 meeting. See section II.B.2.l.

The second exception is for projects to follow up on the National Conference on Eliminating Race and Ethnic Bias in the Courts to be held March 2–5, 1995. Concept papers for projects to implement the State action plans developed at the conference must be mailed by October 6, 1995.

*Package Grants*

This grant program permits applicants to submit one concept paper (or application) for a "package" of related grants rather than separate proposals for each related component of the package. Package grants of up to $750,000 per year may be awarded to support projects that address interrelated topics or the core elements of a multifaceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. Package grant concept papers and applications will be considered on the same schedule as project grants. See sections III.J., V.C. and D., VI.A.2.b. and 3.b., VII.A.3., VII.C., and VII.D. for more information about package grants.

*Technical Assistance Grants*

Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. The Guideline allocates up to $600,000 in FY 1995 funds to support technical assistance grants.

*Curriculum Adaptation Grants*

A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $350,000 for these grants in FY 1995, the same amount allocated in FY 1994. See section II.B.2.b.i.(b).

Like Technical Assistance grant applications, letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section II.B.2.b.i.(b).

*Scholarships*

The Guideline allocates up to $250,000 of FY 1995 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.v.

The Guideline establishes four deadlines for scholarship requests: November 1, 1994 for training programs beginning between February 1, 1995 and April 30, 1995; February 1, 1995 for programs beginning between May 1, 1995 and July 31, 1995; May 1, 1995 for programs beginning between August 1, 1995 and October 31, 1995; and August 1, 1995 for programs beginning between November 1, 1995 and January 31, 1996.

As in past years, the proposed Guideline provides that each scholarship application must be accompanied by a concurrence signed by the chief justice of the applicant's State. The purpose of this requirement has been to assure that: the applicant's participation in the program benefits the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education. Because this requirement has caused some confusion among applicants and there are variations among States in the manner in which the concurrence request is considered, the Institute is particularly interested in receiving comments regarding the benefits and drawbacks of continuing the concurrence requirement.

*Renewal Grants*

There are two types of renewal grants available from SJI: Continuation grants (see sections III.H., V.C. and D., and IX.A.) and on-going support grants (see sections III.I., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than $3 million, a little more than 25% of the total amount available for grants in FY 1995. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

**Special Interest Categories**

The Guideline contains 12 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Four new categories have been added this year: "Children and Families in Court" (section II.B.2.e.); "Resolution of Current Evidentiary Issues" (section II.B.2.g.); "Eliminating Race and Ethnic Bias in the Courts" (section II.B.2.i.); and "Improving the Courts' Response to Gender-Related Crimes of Violence" (section II.B.2.k.).

Five of FY 1994's Special Interest categories have been eliminated: "Court Financing;" "Delay Reduction" (although section II.B.2.b.iv. of the 1995 Guideline solicits applications for a National Symposium on Reducing Litigation Delay) (see also section II.B.2.d.); "Intermediate Sanctions;" "Improving the Use of Juries" (jury issues are now addressed in the "Enhancing Court-Community Relations" Special Interest category (section II.B.2.a.); and "Family Violence and the Courts" (although the issues addressed by that category are now addressed by new Special Interest categories e. and k. noted above).

The Guideline also solicits proposals to conduct two major national conferences: the National Symposium on Reducing Litigation Delay noted above and a National Symposium on Sentencing Issues. See section II.B.2.b.iv.

**Consultant Rates**

The Institute is strongly committed to assuring that the compensation paid to consultants working under SJI grants is reasonable in terms of both the total amount paid to an individual consultant, and the amount paid for individual tasks. A recent internal review of consultant rates found that the number of consultants charging in excess of $300 a day has risen significantly in recent years.

The Board of Directors is concerned about both the level of compensation paid consultants, and the increase in the number of consultants receiving compensation under SJI-supported projects. Although no changes in the Grant Guideline are required, the Institute will be undertaking changes in procedure (including Board participation in the review process and more detailed reports from applicants and grantees) to assure that the compensation paid consultants is commensurate with the nature and quality of the services to be performed; reasonable, in terms of the tasks performed and in total; and consistent with the public service mission of the Institute.

**Recommendations to Grant Writers**

Over the past seven years, Institute staff have reviewed approximately 2,700 concept papers and 1,300 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the guideline, respectively.

1. *What is the subject or problem you wish to address?*

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development

of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, include the following information:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports x 75 pages each x .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion. The Institute will provide an illustrative budget and budget form upon request.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval of the Institute is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit must budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of

application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

**Recommendations To Grantees**

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 800 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. *After the grant has been awarded, when are the first quarterly reports due?* Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. Thus, the Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. *Do reporting requirements differ for renewal grants or package grants?* Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary Financial Status Report covering the entire package as well as separate financial reports for each of the projects in the package, identified by letter of the alphabet (e.g., SJI–93–15R–J–001–A; SJI–93–15R–J–001–B; SJI–93–15R–J–001–C).

3. *What information about project activities should be communicated to SJI?* In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Institute's program monitor prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. *Why is it important to address the special conditions that are attached to the award document?* In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance and Management Division staff are always available to answer questions and provide assistance regarding these provisions.

5. *What is a Grant Adjustment?* A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

6. *What schedule should be followed in submitting requests for reimbursements or advance payments?* Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. *Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants or package grants?* The basic procedures are the same for any grant. A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment requests numbered accordingly. For example, if the last payment request

under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the letter of the alphabet designated in the award document (e.g., SJI–93–15R–J–001–A; SJI–93–15R–J–001–B; SJI–93–15R–J–001–C). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R–J–001–A payment number 2; SJI–93–15R–J–001–B payment number 4; etc.).

8. *If things change during the grant period, can funds be reallocated from one budget category to another?* The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

9. *What is the 90-day close-out period?* Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. *Are funds granted by SJI "Federal" funds?* The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. § 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. *If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?* Except to the extent that they are inconsistent with the express provisions of the SJI Grant Guideline, OMB Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" [see 42 U.S.C. § 10711(c)(1)], the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section XI.J.)

Prior to FY 1994, the Institute did not require grantees to comply with the audit-related provisions of OMB circulars A–110, A–128, or A–133, but did require that grantees, lacking an audit report prepared for a Federal agency, conduct an independent audit in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants.

The current Guideline makes it clear that SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and Office of Management and Budget (OMB) Circular A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees who are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

The Institute requires that non-profit grantees perform an A–133 type of audit if they receive payments totalling more than $50,000. These audits must be conducted in accordance with the Government Accounting Standards issued by the Comptroller General of the United States and must include:

a. An opinion on whether the financial statements of the grantee present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

b. A report on the grantee's internal control structure over financial reporting; and

c. A report on the tests of compliance with applicable laws and regulations that have a direct and material effect on the financial statement amounts.

For grantees receiving SJI grant payments totalling $50,000 or less during their fiscal year, the annual fiscal audit may be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants.

In sum, grantees that receive payments from the Institute of more than $50,000 in a fiscal year must have their annual audit conducted in accordance with Government Accounting Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees that receive $50,000 or less from SJI in a fiscal year must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section XI.J.2.)

12. *Does SJI have a CFDA number?* Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards. Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if $50,000 or more in assistance was received in a fiscal year. For example, if in fiscal year 1994 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the new SJI requirements would not be triggered. The same distinction would preclude an auditor from considering the additional

SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act, OMB Circular A–128, or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section XI.J.2. of the Grant Guideline.

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The following Grant Guideline is proposed by the State Justice Institute for FY 1995:

**State Justice Institute Grant Guideline**

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**Summary**

This Guideline sets forth the proposed programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements, and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well, to Federal, State or local agencies and institutions other than courts for services that cannot be provided adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation as amended. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1995 funds. The concept paper submission deadline for all but two funding categories is November 23, 1994. Concept papers proposing projects that follow up on the November 1994 National Conference on the Management of Mass Tort Cases must be mailed by March 10, 1995. Concept papers to implement the plans developed at the March 1995 National Conference on Eliminating Race and Ethnic Bias in the Courts must be mailed by October 6, 1995.

It is anticipated that between $11 million and $11.5 million will be available for award. This Guideline applies to all concept papers and applications submitted, as well as grants awarded in FY 1995.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.*, as amended.

**I. Background**

The State Justice Institute ("Institute") was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended

to aid and improve State judicial systems.

**II. Scope of the Program**

During FY 1995, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

*A. Authorized Program Areas*

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act of 1992, the Judicial Training and Research for Child Custody Litigation Act of 1992, the International Parental Kidnapping Crime Act of 1993, and the pending Violence Against Women Act of 1994.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction;

20. Development, testing, presentation, and dissemination of model programs directed at the role of State courts in effectively addressing violent crime against women, including training for State judges and court personnel in the laws of the States regarding rape, sexual assault, domestic violence, and other crimes of violence motivated by the gender of the victim, which may include information on: the nature and incidence of such offenses, their impact on the victim and on society, the psychology of persons who commit these offenses and its implications for sentencing, the use of expert witnesses in trials of these offenses, the imposition of limits on the testimony or cross-examination of victims, the reasons why such offenses may be underreported and why victims may decline to testify, the use of protective orders, and related topics; and

21. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems or programs in any of these areas.

*B. Special Interest Program Categories*

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1995, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance

existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories.

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Improving Public Confidence in the Courts.* This category includes research, demonstration, evaluation and education projects designed to improve the public's confidence in the State courts' ability to administer justice fairly, and to test innovative methods for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

Applicants should be aware that the Institute is supporting two national conferences addressing issues on the relationship between the courts and the communities they serve. The National Conference on Eliminating Race and Ethnic Bias in the Courts will be held March 2–5, 1995 in Albuquerque, New Mexico; the National Videoconference Town Hall Meeting on Enhancing Public Confidence in the Courts is scheduled for June, 1995 at sites to be selected. (See also, section II.B.2.i, infra.)

The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

- respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve;
- address court-community problems resulting from the influx of legal and illegal immigrants, including projects to define the impact of immigration on State courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; facilitate communication with Federal authorities when illegal aliens are involved in State court proceedings; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved;
- handle cases involving pro se litigants fairly and effectively; and
- increase public understanding of jury decisions and the juror selection and service process; foster positive attitudes toward jury service; and enhance the attractiveness of juror service through, e.g., incentives to participate, modifications of terms of service, and/or juror orientation and education programs.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases. In addition, it is unlikely that the Institute will support development or testing of additional automated kiosks such as those being used by the courts in Arizona, California, and Florida.

Previous SJI-supported projects that address these issues include: evaluation of an experimental community court in New York City; development of a manual for management of court interpretation services and materials for training and assisting court interpreters; development of touchscreen computer systems, videotapes and written materials to assist pro se litigants; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; and development of a manual for implementing innovations in jury selection, use, and management; technical assistance and training to facilitate implementation of the Standards on Jury Management; development of a guide for making juries accessible to persons with disabilities.

b. *Education and Training for Judges and Other Key Court Personnel.* The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional, and national levels. Accordingly, this category is divided into five subsections: (i) State Initiatives; (ii) National and Regional Education Programs; (iii) Judicial Education Technical Assistance; (iv) Conferences; and (v) Scholarships. All Institute-supported conferences and education and training seminars should be accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) *Development of State Court Education Programs.* Projects to assist development of State court education programs include, but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- Seed money for innovative interdisciplinary and, as appropriate, interbranch educational programs, such as those addressing: (1) The development of better working relationships across court divisions and between courts and criminal justice, social service, and treatment agencies; (2) organizational and leadership development, including team-building; and (3) the specific educational needs of nonsupervisory staff as well as those filling more direct managerial roles; and (4) the development and implementation of strategies for coping with the gap between resources and the demand for services; and
- The development of the expertise, information, and commitment required for the preparation and implementation of State court education plans,

including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development) and for the career-long education of court managers, clerks, and other court personnel.

(b) *Curriculum Adaptation Projects.*

(1) *Description of the Program.* The Board is reserving up to $350,000 to provide support for adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for curriculum adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. The program is designed to provide State and local courts with sufficient support to prepare and conduct a State-specific or regional modification of a model curriculum, course module, national or regional conference program, or other model education program developed with SJI funds by any other State or national organization. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix VII.

Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

(2) *Review Criteria.* Curriculum Adaptation grants will be awarded on the basis of criteria including: the need for the educational program; the need for outside funding to support the program; the likelihood of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making implementation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

(3) *Application Procedures.* In lieu of concept papers and formal applications, applicants for grants may submit, at any time, a detailed letter, and three photocopies. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

- *Project Description.* Why is this education program needed at the present time? What is the model curriculum or training program to be tested? How will it be adapted for State use, and who will be responsible for adapting the model curriculum? Who will the participants be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)? How many participants are anticipated?
- *Need for funding.* Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Likelihood.* What is the proposed date for presenting the program? What types of modifications in the length, format, and content of the model curriculum are anticipated? How will the presentation of the program be evaluated and by whom? (Ordinarily, an outside evaluation is not necessary.) What measures will be taken to facilitate subsequent presentations of the adapted program?
- *Expressions of Interest By Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)
- *Budget and matching State contribution.* A copy of budget Form E (see Appendix IV) and a budget narrative (see Section VII.B) that describes the basis for the proposed costs and the source of the match offered.
- Local courts should attach a concurrence signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix V.)

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning. The Board of Directors has delegated its authority to approve Curriculum Adaptation grants to its Judicial Education Committee. The committee anticipates acting upon applications within 45 days after receipt. Formal grant awards will be made only after committee approval and negotiation of the final terms of the grant.

(4) *Grantee Responsibilities.* A recipient of a Curriculum Adaptation grant must:

(a) Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L., infra);

(b) Include in each grant product a prominent acknowledgement that support was received from the Institute, along with the "SJI" logo, and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline; and

(c) Submit two copies of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that explains how it intends to replicate the program in the future.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in Section IX.

ii. *National and Regional Education Programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Ordinarily, national and regional education projects are expected to develop curricula (as defined in Section III.K.) that may be adapted by State and local courts. Programs to be supported may include:

- Training programs or seminars on topics of interest and concern that transcend State lines including the factors that should be considered in deciding child custody and termination of parental rights;
- Multi-State or regional training programs sponsored by national organizations, non-profit groups, State courts or universities;
- Interdisciplinary and, as appropriate, interbranch educational programs for State trial and appellate court judges, State and local court managers including clerks of court, and non-supervisory staff or other court personnel, including seminars based on Institute-supported research, and programs designed to develop better working relationships across court divisions and between courts and criminal justice, social service, and treatment agencies; and
- Innovative independent study models that would enhance the availability of judicial education.

especially for judges and court personnel who do not have ready access to training programs, and possible models for the credentialing of this type of continuing judicial education.

iii. *Judicial Education Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

The Institute is currently funding the following judicial education technical assistance projects: the Judicial Education Reference Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and follow-up assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting:

(a) *National Symposium on Sentencing: The Judicial Response to Crime,* to enable State and Federal judges, legislators, prosecutors, defense counsel, corrections officials, legal academics, social science researchers, media representatives, and members of the public to:

- Evaluate what is known about the impact of current sentencing practices on adult offenders, juvenile offenders tried as adults, and juvenile offenders, the criminal and juvenile justice systems, and the public's perception of justice;
- Explore how changes in sentencing legislation and judicial practices might better accomplish the goals of sentencing;
- Identify changes in procedure, new sources of information or education, and other innovations that might better assure that a sentence serves the judge's intended sentencing goal(s) in a particular case; and
- Recommend specific changes in law, policy, and procedure that would help courts better accomplish the goals of sentencing and improve the public's confidence in the justice system.

Among the topics which could be addressed at the Symposium would be: the impact that Federal and State sentencing guidelines, mandatory minimums, and other determinate sentencing approaches have had on the courts and other components of the criminal justice system, the public, and offenders; whether these approaches have fulfilled their envisioned purposes; whether sentencing innovations (e.g., giving judges greater access to information about the offender, the victim, and available sentencing options; changed plea bargaining practices; and greater use of intermediate sanctions) might better assure just and effective sentencing; and whether current sentencing legislation, processes, and decisions adequately reflect the public's expectations of justice.

(b) *National Symposium on Reducing Litigation Delay.* The Institute has supported over 20 projects examining methods for improving caseflow in various types and levels of courts, or training judges and court managers on pretrial and trial management. The Institute is interested in supporting a symposium that would bring together litigation delay researchers, technical assistance providers, trial and appellate court judges and managers both from courts that have not successfully implemented programs for improving caseflow and reducing the time to disposition as well as those that have, State court administrators, attorneys, scholars, and others to synthesize and share the information resulting from the projects funded by the Institute and others; determine the approaches to pretrial, trial, and individual docket management that appear to be most effective and the best methods for implementing them; identify the programs that may be needed to assist courts in further reducing litigation delay; define and prioritize the topics for further research on improving caseflow management; and encourage and assist courts that are experiencing litigation delay to undertake measures to ensure the prompt and fair disposition of cases.

v. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $250,000 (in addition to any scholarship funds remaining from Fiscal Year 1994) to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. The annual or midyear meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

A scholarship may cover the cost of tuition and travel up to a maximum total of $1,500 per scholarship. (Transportation expenses include roundtrip coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

Scholarship recipients are encouraged to check with their tax advisor to determine whether the scholarship constitutes taxable income under Federal and State law.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, to full-time professional, State or local court personnel with management

responsibilities, and to supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

November 1, 1994, for programs beginning between February 1, 1995 and April 30, 1995;

February 1, 1995, for programs beginning between May 1 and July 31, 1995;

May 1, 1995, for programs beginning between August 1, and October 31, 1995; and

August 1, 1995, for programs beginning between November 1, 1995 and January 31, 1996.

No exceptions or extensions will be granted.

(d) *Concurrence Requirement. All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence (Form S2, see Appendix III).* Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence (Form S2) may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within one week after the appropriate application mailing deadline (i.e. by November 8, 1994, or February 8, May 8, or August 8, 1995). No application will be reviewed if a signed Concurrence has not been received by the required date.

(e) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 60 days after the relevant application deadline. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of the scholarship support awarded in any quarter to no more than $62,500 (in addition to scholarship funds that may not have been awarded in previous quarters).

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained;
- The benefits to the applicant's court or the State's court system that would be derived from the applicant's participation in the specific educational program, including a description of current legal, procedural, administrative or other problems affecting the State's courts, related to topics to be addressed at the educational program (in addition to submission of a signed Form S2);
- The absence of educational programs in the applicant's State addressing the particular topic;
- How the applicant will disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The likelihood that the applicant would be able to attend the program without a scholarship;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts;
- The balance of scholarships among educational programs; and
- The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(f) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Dispute Resolution and the Courts.* This category includes research, evaluation, and demonstration projects addressing the findings and recommendations developed at the National Symposium on Court-Connected Dispute Resolution Research, conducted in Orlando in October 1993. The Institute is interested in projects that enhance the courts' ability to compare findings among research studies; address the nature and operation of ADR programs within the context of the court system as a whole; compare dispute resolution processes to attorney settlement as well as trial; and promote the ability of the courts to move toward on-going self-evaluation of court-connected dispute resolution programs. Among the topics of greatest interest are:

i. The Structure of Court-Connected Dispute Resolution Programs including such issues as the appropriate timing for referrals to dispute resolution services and the effects implementing such referrals at various stages during litigation; the effect of different referral methods including any differences in outcome between voluntary and mandatory referrals; cultural issues, including the nature of cultural conflict and its effect on outcomes; and approaches that provide rural courts and other under-served areas with adequate court-connected dispute resolution services.

ii. The Selection, Qualifications and Training of Court-Connected Neutrals including what selection procedures are most effective; what standards should be used to qualify a neutral; what constitutes effective dispute resolution training; on what basis and when people should be eliminated from the training process; how courts can maintain and improve neutrals' skills; and how ineffective neutrals should be removed from the pool.

iii. Innovative uses of court-connected dispute resolution for resolving complex cases including land-use litigation.

In previous funding cycles, grants have been awarded to support evaluation of the use of mediation in civil, domestic relations, juvenile, medical malpractice, appellate, and minor criminal cases. SJI grants also have supported assessments of the

impact of early neutral evaluation of motor vehicle cases, the impact of private judging on State courts, multi-door courthouse programs, arbitration of civil cases, and civil settlement programs. In addition, SJI has supported the creation of a consumer guide to choosing a mediator; the development of training programs for judges; and technical assistance on implementation of multi-door courthouse programs, developing standards for court-annexed mediation programs, examination of the applicability of various dispute resolution procedures to different cultural groups, and creation of a national database of court-connected dispute resolution programs.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs. Courts also should be advised that it is preferable for the applicant to support operational costs of a new program, with Institute funds targeted to support related technical assistance, training, and evaluation needs.

d. *Planning and Managing the Future of the Courts.* The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

- Development, implementation, institutionalization, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis, benchmarking, and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;
- Adaptation, implementation and evaluation of innovative management approaches, such as total quality management, designed to complement, enhance or support use of a long-range strategic planning process. This includes the development and testing of performance standards and other techniques to enable trial and appellate court officials to conduct user evaluations of the quality of court services and to measure public, internal, and supplier satisfaction as a means to improve court performance. Also included is the planning, implementation, and evaluation of innovative delay and cost reduction programs including assessments of the advantages and disadvantages of privatizing court activities;
- Development, implementation, and evaluation of mechanisms for linking assessments of effectiveness such as the Trial Court Performance Standards to fiscal planning and budgeting, including service efforts and accomplishments approaches (SEA), performance audits, and performance budgeting;
- Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation or institutionalization of the planning process and/or related innovative management approaches, including training to enhance the ability of courts to develop effective plans for coping with natural other disasters.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1995.

The Institute also has supported planning, futures, and innovative management projects including: national and Statewide "future and the courts" conferences and training; development of curricula, guidebooks and a video on visioning, and a long-range planning guide for trial courts; the provision of technical assistance to courts conducting futures and long-range planning activities, including development of a court futures network on Internet; a test of the feasibility of implementing the Trial Court Performance Standards in four States; the development of Appellate Court Performance Standards; the application of total quality management principles to court operations, and the development of TQM guidebook for trial courts; and the development of service efforts and accomplishments (SEA) measures for municipal courts.

e. *Children and Families in Court.* This category includes education, evaluation, technical assistance, and research projects to identify and inform judges of appropriate and effective approaches for:

- Adjudicating child custody litigation in which family violence may be involved;
- Determining and addressing the service needs of children exposed to family violence including the short- and long-term effects on children of exposure to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Adjudicating and monitoring child abuse and neglect litigation and reconciling the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family;
- Adjudicating and developing dispositions for cases involving elder abuse;
- Determining when it may be appropriate to refer a case involving family violence for mediation, and what procedures and safeguards should be employed;
- Coordinating multiple cases involving members of the same family, and obtaining and appropriately using social and psychological information gathered in one case involving a family member in a case involving another family member; and
- Handling the criminal and civil aspects of interstate and international parental child abductions.

In previous funding cycles, the Institute supported a national and a State symposium on courts, children, and the family; a national symposium on enhancing coordination of cases involving the same family that are being heard in different courts; development and evaluation of a curriculum addressing the adjudication of allegations of child sexual abuse when custody is in dispute; and the development and testing of curricula to enhance judges' understanding of the dynamics of family violence and guide them in adjudication family violence cases and custody cases in which spousal abuse is involved. In addition, the Institute has supported studies of the appropriate use of mediation in child abuse cases and in divorce, custody, and visitation cases involving family violence; development of a video and other materials for parties and children awaiting a court hearing in domestic relations cases involving family violence; a benchbook for judges on child abuse and neglect caws stemming from parental substance abuse; curricula to fairly adjudicate child abuse and neglect cases; an examination of the effectiveness of probation as a sanction for child sexual abuse offenders; and the development of guidelines for courts in handling elder abuse cases.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits,

and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to determine what benefits and problems may occur as a result of courts entering the "information superhighway," including projects to establish standards for judicial electronic data interchange (EDI); local, Statewide, and/or interstate demonstrations of the courts' use of EDI (i.e., the exchange of documents or data in a computerized format that enables courts to process or perform work electronically on the documents received) beyond simple image transfer (facsimile or computer-imaging); and demonstrations and evaluations of innovative judicial/court uses of electronic communications networks including those required to meet the reporting mandates contained in recent Federal legislation such as the Brady Act and the National Child Protection Act. In addition, the Institute is interested in demonstrations and evaluation of the effective use of management information systems to monitor, assess, and predict evolving court needs; and evaluations of innovative technologies highlighted at the Fourth National Conference on Court Technology held in Nashville in October 1994.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that has been thoroughly tested in other jurisdictions such as the establishment of videolinks between courts and jails, the use of optical imaging for recordkeeping, and the creation of an automated management information system. (See section XI.H.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g.: interactive computerized information systems to assist pro se litigants; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; an automated appellate court bulletin board; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges.

Demonstration and evaluation of records techno-logy, including: the development of a court management information display system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; testing of a document management system for small courts that uses imaging technology, and of automated telephone docketing for circuit-riding judges; and evaluation of the use of automated teller machines for paying jurors; and

Court technology assistance services, e.g., circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; and an assessment of programs that allow public access to electronically stored court information.

Grants also provided support for national court technology conferences; preparation of guidelines on privacy and public access to electronic court information; the testing of a computerized citizen intake and referral service; development of an "analytic judicial desktop system" to assist judges in making sentencing decisions; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

g. *Resolution of Current Evidentiary Issues.* This category includes educational programs and other projects to assist judges in deciding questions regarding:

- The admissibility of new forms of demonstrative evidence, including computer simulations;
- The application of the standards set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* governing the admissibility of scientific and technical evidence;
- The admissibility of testimony based on recovered memory, and the admissibility of expert testimony about memory recovery;
- The competence of children to testify in criminal, civil, and family cases;
- The appropriate use of expert testimony regarding the impact of gender-related offenses on victims and their willingness and ability to testify, and the application of rape shield laws and other limits on the introduction of evidence or the cross-examination of witnesses;
- Determining what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; and
- Other complex evidentiary issues.

In previous funding cycles, the Institute has supported the development of a computer-assisted training program on evidentiary problems for juvenile and family court judges; training on medical/legal and scientific evidence issues; regional seminars on evidentiary questions; and development of protocols for handling child victim cases.

h. *Substance Abuse.* This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; and the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond effectively to the impact of substance abuse-related cases on their ability to manage their overall caseloads fairly and efficiently.

The Institute is particularly interested in funding innovative projects which evaluate the applicability of court-enforced treatment programs to substance abuse-related cases involving juveniles and cases requiring treatment services in addition to substance abuse treatment (e.g., spousal abuse, child abuse, or mental health cases); establish coordinated efforts between local courts and treatment providers for the effective disposition of cases involving substance

abuse; or evaluate the effectiveness of various court responses to treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively.

The Institute will not fund projects focused on developing additional assessment tools, establishing court-enforced treatment programs for adult substance abusers, or providing support for basic court or treatment services.

The Institute is currently supporting the presentation of a National Symposium on the Implementation and Operation of Court-Enforced Drug Treatment Programs. In previous funding cycles, the Institute has sponsored a National Conference on Substance Abuse and the Courts, and State efforts to implement the plans developed at that Conference. It has also supported projects to evaluate court-enforced treatment programs initiated by the Dade County, Florida, Pulaski County, Arkansas, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance (BJA) also are supporting two technical assistance projects: one by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute and the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT) have entered into inter-agency agreement to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. *Eliminating Race and Ethnic Bias in the Courts.* This category includes State and local court projects to implement the action plans and strategies developed by the teams that participated in the Institute-supported National Conference on Eliminating Race and Ethnic Bias in the Courts, to be held in Albuquerque, New Mexico in March, 1995, and projects designed to assist teams in implementing their plans.

A special accelerated cycle has been established for considering such projects. In order to be considered during the special cycle, concept papers proposing implementation projects must be mailed by October 6, 1995. They will be considered by the Institute's Board of Directors at its meeting in November, 1995. Applications based on those concept papers will be considered by the Board at its meeting in March, 1996.

j. *Assessing the Impact of Health Care-Related Issues on the State Courts.* This category includes projects to develop educational curricula and other materials to assist judges in:

- Determining and preparing approaches for dealing with the impact on the State Courts of proposed or enacted changes in the State and Federal health care systems, including the anticipated increase in the number of disputes regarding the scope and nature of insurance coverage;
- Understanding and responding to the scientific, legal and ethical issues raised by the continuing advances in the application of biotechnology to health care, including the use of gene therapy and genetic testing; and
- Using effective innovative remedies in long-term environmental and toxic substance exposure cases such as medical surveillance orders.

In previous funding cycles, the Institute has supported projects to: develop guidelines for judges in cases regarding the withdrawal of life-sustaining treatment; prepare benchbooks, handbooks, videotapes, and training materials on guardianship, the Americans with Disabilities Act, and AIDS; conduct a series of health science-law workshops for judges and judicial educators; and develop a deskbook for judges on medical-legal issues arising in juvenile and family cases.

k. *Improving the Courts' Response to Gender-Related Crimes of Violence.* This category includes the development, testing, presentation, and dissemination of education programs for judges and court personnel on:

- The nature and incidence of stalking and gender-related crimes of violence (e.g., rape, sexual assault, partner abuse), and their impact on the victim and society;
- Sentencing decision-making in cases involving gender-related crimes of violence;
- The use of self-defense and provocation defenses by alleged victims of gender-related violence accused of assaulting or killing their alleged abusers; and
- The effective use and enforcement of protective orders and the implications of mutual orders of protection.

In previous funding cycles, the Institute supported a national conference on family violence and the courts, and follow-up conferences in several States; development of a comprehensive curriculum on handling stranger and non-stranger rape and sexual assault cases; evaluation of the effectiveness of court-ordered treatment for family violence offenders; a demonstration of ways to improve court processing of injunctions for protection and a study of ways to improve the effectiveness of civil protection orders for family violence victims; an examination of state-of-the-art court practices for handling family violence cases and of ways to improve access to rural courts for victims of family violence; and a manual for judges on the use of expert testimony regarding the battered woman syndrome.

l. *The Relationship Between State and Federal Courts.* This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative education, evaluation, demonstration, technical assistance and research projects that:

i. Build upon the findings and recommendations gained at the Institute-supported National Conference on the Management of Mass Tort Cases to be held in Cincinnati on November 10–13, 1994. Concept papers proposing projects addressing these issues must be mailed by March 10, 1995. Concept papers following up on the Mass Tort Conference will be reviewed by the Board of Directors at its April 1995 meeting. (A summary of the recommendations and findings from the conference will be published in SJI NEWS in December, 1994.)

ii. Develop and test curricula and other educational materials to:

- Enhance the operation of State-Federal Judicial Councils;
- Illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and

• Conduct regional conferences replicating the October, 1992 National Conference on State/Federal Judicial Relationships.

iii. Develop and test new approaches to:

• Improve the fairness and pace of capital litigation by assigning special capital litigation law clerks to assist trial judges hearing cases involving crimes punishable by death;

• Otherwise handle capital habeas corpus cases fairly and efficiently;

• Coordinate related State and Federal criminal cases;

• Coordinate cases that may be brought under the pending Violence Against Women Act;

• Exchange information and coordinating calendars among State and Federal courts; and

• Share jury pools, alternative dispute resolution programs, and court services.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships and the Chief Justices' Special Committee of State Judges on Asbestos Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining methods of State and Federal court cooperation; procedures for facilitating certification of questions of law; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal cases; the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions, educational programs for State judges on coordination of Federal bankruptcy cases with State litigation, and a seminar examining the implications of the "Federalization" of crime.

*C. Single Jurisdiction Projects*

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

a. *Description of the Program.* The Board will set aside up to $600,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. *Application Procedures.* Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. *Description of the Program.* The Board will set aside up to $600,000 of Fiscal Year 1995 funds (in addition to any technical assistance funds remaining from Fiscal Year 1994) to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $150,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program or facility in another jurisdiction that the applicant court is interested in replicating, or both.

The technical assistance must be completed within 12 months after the start-date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount.Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute two copies of a final report that explains how it intends to act on the consultant's recommendations as well as two copies of the consultant's written report.

b. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

c. *Application Procedures.* In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the criteria listed above. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. *Need for Funding.* What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. *Project Description.* What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures

and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by November 4, 1994; February 17, 1995; April 28, 1995; and July 14, 1995).

iii. *Likelihood of implementation.* What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

iv. *Budget and matching State contribution.* A completed Form E, "Preliminary Budget" (see Appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. *Support for the project from the State supreme court or its designated agency or council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix V.) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1, 1994, and January 15, 1995, will be notified of the Board's decision by March 31, 1995; those submitting letters between January 16, and March 15, 1995, will be notified by May 31, 1995. Notification of the Board's decisions concerning letters received between March 16 and June 15, 1995, will be made by August 31, 1995; and applicants submitting letters between June 16 and September 29, 1995, will be notified by November 30, 1995. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in Section II.B.2.b.iii.

## III. Definitions

The following definitions apply for the purposes of this guideline:

*A. Institute*

The State Justice Institute.

*B. State Supreme Court*

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

*C. Designated Agency or Council*

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

*D. Grantee*

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

*E. Subgrantee*

A State or local court which receives Institute funds through the State Supreme Court.

*F. Match*

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Institute Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

*G. Continuation Grant*

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

*H. On-going Support Grant*

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

*I. Package Grant*

A single grant that supports two or more closely-related projects which logically should be viewed as a whole or would require substantial duplication

of effort if administered separately. Closely-related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

*J. Human Subjects*

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

*K. Curriculum*

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

*L. Products*

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; and computer software.

**IV. Eligibility for Award**

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Finally, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

**V. Types of Projects and Grants; Size of Awards**

*A. Types of Projects*

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

*B. Types of Grants*

The Institute has established the following types of grants:

1. New grants (See sections VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package Grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical Assistance grants (See section II.C.2.).
6. Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

*C. Maximum Size of Awards*

1. Except as specified below, concept papers and applications for new projects other than national conferences, and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000, except as provided in paragraph V.C.3. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. An application for a package grant may request funding in an amount up to a total of $750,000 per year.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

*D. Length of Grant Periods*

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum

adaptation grants ordinarily will not exceed 12 months.

**VI. Concept Paper Submission Requirements for New Projects**

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

*A. Format and Content*

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects," or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

a. *Concept Papers Proposing a Single Project.* The program narrative of a concept paper describing a single project should be no longer than necessary, but *in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used.* The narrative should describe:

i. *Why this project is needed and how it will benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed sites(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

ii. *What will be done if a grant is awarded?* A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows.

iii. *How the effects and quality of the project will be determined?* A summary description of how the project will be evaluated, including the evaluation criteria.

iv. *How others will find out about the project and be able to use the results?* A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* The program narrative of a concept paper requesting a package grant (see definition in section III.I.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. *Concept Papers Proposing a Single Project.* A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in Appendix IV of this Guideline.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each project budget must be identified by the title that corresponds to the narrative description of the project in the program narrative and a letter of the alphabet (i.e. A, B, C). Each of these budgets must include the estimates and information specified on Form E included in Appendix IV of this Guideline.

c. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000.* Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight-page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 13, 1995.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2.a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper

The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

*B. Selection Criteria*

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

*C. Review Process*

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

*D. Submission Requirements*

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1995 must be sent by first class or overnight mail or by courier no later than November 23, 1994, except for concept papers proposing projects that follow-up on the National Conference on the Managment of Mass Tort Cases which must be sent by March 10, 1995 (see section II.B.2.l.), and concept papers proposing to implement an action plan developed during the National Conference on Eliminating Race and Ethnic Bias in the Courts which must be sent by October 6, 1995 (see section II.B.2.i.). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. If support letters are sent under separate cover, they must be received no later than January 13, 1995 in order to ensure that there is sufficient time to bring them to the Board's attention.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

**VII. Application Requirements for New Projects**

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below.

*A. Forms*

1. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of Form B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified

designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of Form C or in the spreadsheet format of Form C1. Applicants requesting more than $100,000 are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to Form C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

*B. Project Abstract*

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

*C. Program Narrative*

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas To Be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. *For research and evaluation projects,* the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. *For education and training projects,* the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. *For demonstration projects,* the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. *For technical assistance projects,* the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package. Each project must be identified by a separate letter of the alphabet (i.e., A, B, C) and a descriptive title.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the

effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. An evaluation approach suited to many *research* projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating *educational or training* programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a *demonstration* project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For *technical assistance* projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving *human subjects* should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package with the same project title and alphabetic identifier describing the project in the program narrative, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e. whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period. Applicants also should provide for the preparation of a one-page abstract summarizing products resulting from a project for inclusion on the Institute's electronic bulletin board.

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. No grant funds may be obligated for publication or

reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format. For all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the summary or a brief abstract in ASCII must be submitted.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a non-judicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application, or they may be sent under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than October 17, 1994, February 1, 1995, March 31, 1995, June 23, 1995, or August 18, 1995, respectively).

*D. Budget Narrative*

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component, with the same alphabetic identifier and project title used to describe each component project in the program narrative. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to pay for coffee breaks during seminars or meetings, or to purchase alcoholic beverages.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706 (d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant will perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., number of days × the daily consultant rates), and the method for selection. Rates for

consultant services must be set in accordance with section XI.H.2.c. Honorarium payments must be justified in the same manner as other consultant payments.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.F., VIII.B., X.B. and XI.D.1.)

*E. Submission Requirements*

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photo-copies of the application package must be sent by first class or overnight mail, or by courier no later than May 10, 1995. A postmark or courier receipt will constitute evidence of the submission date. Please mark application on all application package envelopes and send to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. If support letters are sent under separate cover, they must be received no later than four weeks before the meeting of the Board of Directors at which the application will be considered (i.e. no later than October 17, 1994, February 1, 1995, March 31, 1995, June 23, 1995, or August 18, 1995, respectively) in order to ensure that there is sufficient time to bring them to the Board's attention.

**VIII. Application Review Procedures**

*A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

*B. Selection Criteria*

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

*C. Review and Approval Process*

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

*D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

*E. Notification of Board Decision*

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

*F. Response to Notification of Approval*

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

**IX. Renewal Funding Procedures and Requirements**

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on-going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than $3 million of available FY 1995 grant funds for renewal grants.

*A. Continuation Grants*

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C.1 and 3, and V.D.1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* A clear, concise statement of what the continuation project is intended to accomplish.

b. *Need for Continuation.* An explanation of why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

c. *Report of Current Project Activities.* A discussion of the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* The key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff and Grantee Capability.* A full description of any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* A detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* An indication of why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

*B. On-Going Support Grants*

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for midcourse corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of

the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

An application for on-going support of a package grant should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why. An application for on-going support of a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period. Ordinarily, the Board will not consider an application for on-going support until the Institute has received the evaluator's report.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* Describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

An application for on-going support of a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period. An application for on-going support of a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

**X. Compliance Requirements**

The State Justice Institute Act contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

*A. State and Local Court Systems*

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

*B. Matching Requirements*

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of

not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see section III.F.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

*C. Conflict of Interest*

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

*D. Lobbying*

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

*E. Political Activities*

No recipient shall contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

*F. Advocacy*

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

*G. Prohibition Against Litigation Support*

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

*H. Supplantation and Construction*

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

*I. Confidentiality of Information*

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

*J. Human Research Protection*

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

*K. Nondiscrimination*

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

*L. Reporting Requirements*

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

*M. Audit*

Each recipient must provide for an annual fiscal audit which shall include an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. For grantees receiving more than $50,000 in Institute grant payments during their fiscal year, the audit shall also include reports on the grantee's internal control structure and compliance with applicable regulations. (See section XI.J. of the Guideline for the requirements of such audits.)

*N. Suspension of Funding*

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

*O. Title to Property*

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

*P. Original Material*

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

*Q. Acknowledgment and Disclaimer*

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. A camera-ready logo sheet is available from the Institute upon request.

Recipients also shall display the following disclaimer on all grant products:

> This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI–(insert number)] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

*R. Institute Approval of Grant Products*

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval. These drafts shall be submitted sufficiently before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute.

*S. Distribution of Grant Products to State Libraries*

Grantees shall send 20 copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

*T. Copyrights*

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

*U. Inventions and Patents*

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

*V. Charges for Grant-Related Products/ Recovery of Costs*

When Institute funds fully cover the cost of developing, producing, and

disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for developing, reproducing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products.

Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25.00, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

If, following the end of the grant period, the sale of grant products results in revenues that exceed those costs, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.G. and XI.F. for requirements regarding project-related income.

*W. Availability of Research Data for Secondary Analysis*

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

*X. Approval of Key Staff*

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

**XI. Financial Requirements**

*A. Accounting Systems and Financial Records*

All grantees, subgrantees, contractors, and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

*B. Supervision and Monitoring Responsibilities*

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to

projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

*C. Accounting System*

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

*D. Total Cost Budgeting and Accounting*

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

*E. Maintenance and Retention of Records*

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

*F. Project-Related Income*

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education

and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs that were not covered by Institute grant funds or grantee matching contributions to the project. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions.

If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner.

Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

*G. Payments and Financial Reporting Requirements*

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant may be submitted at the same time, but must be calculated separately by component project. The alphabetic project identifier (A, B, C, etc.) should be appended to the grant number in Block 5 of the Request for Advance or Reimbursement. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports;

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or on-going support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package and separate reports for each project within the package. On the separate reports for the component projects, the alphabetic project identifier (A, B, C, etc.) must be appended to the grant number in Block 5 of the Financial Status Report.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

*H. Allowability of Costs*

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

*I. Procurement and Property Management Standards*

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

*J. Audit Requirements*

1. Implementation

Each non-scholarship grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. For grantees receiving more than $50,000 in payments during their fiscal year, the audit shall be conducted in accordance with the Government Accounting Standards issued by the Comptroller General of the United States and shall include:

a. An opinion on whether the financial statements of the grantee present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

b. A report on the grantee's internal control structure over financial reporting; and,

c. A report on the tests of compliance with applicable laws and regulations that have a direct and material effect on the financial statement amounts.

For grantees receiving payments totalling $50,000 or less during their fiscal year, the annual fiscal audit may be conducted in accordance with Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants (AICPA). A written report shall be prepared upon

completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within 30 days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

*K. Close-Out of Grants*

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

**XII. Grant Adjustments**

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

*A. Grant Adjustments Requiring Prior Written Approval*

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A change in the name of the grantee organization.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

*B. Request for Grant Adjustments*

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers

determine would help the Institute's review.

*C. Notification of Approval/Disapproval*

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

*D. Changes in the Scope of the Grant*

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

*E. Date Changes*

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

*F. Temporary Absence of the Project Director*

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

*G. Withdrawal of/Change in Project Director*

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

*H. Transferring or Contracting Out of Grant-Supported Activities*

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

**State Justice Institute Board of Directors**

Malcolm M. Lucas, Chairman, Chief Justice, Supreme Court of California, San Francisco, California

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David I. Tevelin, Executive Director (ex officio)

**David I. Tevelin,**

*Executive Director.*

**Appendix I—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts**

Mr. Oliver Gilmore, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990

Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547

Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 542–9301

Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100

Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585

Ms. Faith P. Arkin, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700

Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 922–5081

Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 500, Atlanta, Georgia 30334–5900, (404) 656–5171

Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968

Honorable Daniel G. Heely, Administrative Director of the Courts, Office of the Administrative Director, Post Office Box 2560, Honolulu, Hawaii 96813, (808) 539–4900

Honorable Charles F. McDevitt, Chief Justice, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–3464

Mr. Robert E. Davison, Director, Administrative Office of the Courts, 840 S. Spring Street, Springfield, Illinois 62704, (312) 793–3250

Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241

Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873

Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747

Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 822–0792

Ms. Deborah A. Unitus, Assistant State Court Administrator, Administrative Office of the Courts, Rowe Boulevard and Taylor Avenue, Annapolis, Maryland 21401, (301) 974–2141

Honorable John E. Fenton, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, Massachusetts 02108, (617) 742–8575

Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0136

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474

Honorable Leslie Johnson, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955

Mr. Ron Larkin State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585

Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076

Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419

Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275

Honorable E. Leo Milones, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004

Ms. Deborah Kanter, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800

Mr. James C. Drennan, Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107

Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450

Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000

Dr. Robert C. Harrell, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3266

Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 734–1800

Honorable Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885

Mr. Charles E. Ferrell, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687

Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625

Mr. Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371

Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281

Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455

Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th and Washington, Olympia, Washington 98504, (206) 753–5780

Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145

Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828

Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581

## Appendix II—SJI Libraries Designated Sites and Contacts (August 1993)

State: Alabama
Location: Supreme Court Library
Contact: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347

State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583

State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library and Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035

State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655

State: California
Location: Administrative Office of the Courts
Contact: Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100

State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720

State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301

State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480

State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700

State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building,

Tallahassee, Florida 32399–1900, (904) 488–8621
State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 550, Atlanta, Georgia 30334, (404) 656–5171
State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
State: Idaho
Location: AOC Judicial Education Library/ State, Law Library in Boise
Contact: Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–3316
State: Illinois
Location: Supreme Court Library
Contact: Ms. Brenda I. Larison, Supreme Court Library, Supreme Court Building, Springfield, Illinois 62701–1791, (217) 782–2424
State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557
State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education and Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319, (515) 281–8279
State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257
State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848
State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705
State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600
State: Maryland
Location: State Law Library,
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–3395
State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148
State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804
State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084
State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590
State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660
State: National
Location: JERITT Project/ Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824
State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730
State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747
State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230
State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850
State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063
State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006 (by courier), 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425
State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229
State: Northern Mariana Islands
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275
State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044
State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440
State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919
State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275
State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U. S. C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944
State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016
State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722
State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)

Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804
State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371
State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602, (802) 828–3278
State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455
State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146
State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145
State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424
State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509
National: American Judicature Society
Contact: Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900
National: National Center for State Courts
Contact: Ms. Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

## Appendix III—State Justice Institute Scholarship Application

(Form S1)

**Applicant Information**

1. Applicant Name: _____
(Last) (First) (M)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____
6. Congressional District: _____

**Program Information**

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

**Estimated Expenses**

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)
Tuition: $ _____
Transportation: $ _____
(airfare, trainfare or if you plan to drive, the approximate distance and mileage rate)
Amount Requested: $ _____
(This application does not serve as a registration for the course. Please contact the education provider.)

**Additional Information**

Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)

1. How will your taking this course benefit you, your court, and the State's courts generally?
2. Is there any education or training currently available through your State on this topic?
3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.
4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
5. How long have you served as a judge or court manager?
6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
7. How long has it been since you attended a non-mandatory continuing professional education program?

**Statement of Applicant's Commitment**

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____
Signature

_____
Date

Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314.

**State Justice Institute—Scholarship Application; Concurrence**

(Form S2)

I, _____
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the
program entitled _____
prepared by _____
Name of Applicant
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____
Signature

_____
Name

_____
Title

_____
Date

## Appendix IV

STATE JUSTICE INSTITUTE PROJECT BUDGET

[Form E]

| Category | SJI funds | Cash match | In-kind match |
|---|---|---|---|
| Personnel | $ | $ | $ |
| Fringe Benefits | $ | $ | $ |
| Consultant/Contractual. | $ | $ | $ |
| Travel | $ | $ | $ |
| Equipment | $ | $ | $ |
| Supplies | $ | $ | $ |
| Telephone | $ | $ | $ |
| Postage | $ | $ | $ |
| Printing/Photocopying. | $ | $ | $ |
| Audit | $ | $ | $ |
| Other | $ | $ | $ |
| Indirect Costs (%). | $ | $ | $ |
| Total | $ | $ | $ |
| Project Total: $_____ | | | |

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

## Appendix V

**State Justice Institute**

*Certificate of State Approval*

Form B

(Instructions on Reverse Side)

The _____
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled _____

_____
prepared by _____
Name of Applicant
approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.
[ ] designates _____

Name of Designated Trial or Appellate Court or Agency

Signature

Name

Title

Date

**Instructions—Form B**

The State Justice Institute Act requires that: Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

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federal register

Monday
August 22, 1994

Part III

# Nuclear Regulatory Commission

10 CFR Part 20, et al
Radiological Criteria for
Decommissioning; Proposed Rule

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 20, 30, 40, 50, 51, 70, and 72

RIN 3150–AD65

### Radiological Criteria for Decommissioning

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations regarding decommissioning of licensed facilities to provide specific radiological criteria for the decommissioning of lands and structures.

The proposed criteria would apply to the decommissioning of all licensed facilities and facilities subject to the Commission's jurisdiction. The Commission expects to apply these criteria in determining the adequacy of remediation of residual radioactivity resulting from the possession or use of source, byproduct, and special nuclear material. For high-level and low-level waste disposal facilities, the criteria would apply only to ancillary surface facilities that support radioactive waste disposal activities because criteria for closure of the remainder of the facility and termination of the license are currently specified. For uranium mills, the criteria apply to decommissioning of the facility but not to soil cleanup and the disposal of uranium mill tailings. The criteria would apply to decommissioning of nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. However, they would not apply to sites already covered by a decommissioning plan approved by the Commission before the effective date of this rule, if it is adopted in final form.

The intent of this rulemaking is to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before a site can be considered decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site remediation and decommissioning activities anticipated in the future. The Commission has reassessed the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards, improvements in remediation and radiation detection technologies, decommissioning experience obtained during the past 15 years, and comments received from workshops held as part of this rulemaking effort.

The NRC presently allows decommissioning on a site-specific basis using existing guidance. However, the Commission believes that codifying radiological criteria for decommissioning in the regulations would allow the NRC to more effectively carry out its function of protecting public health and the environment at decommissioned sites by providing for more efficient use of NRC and licensee resources, consistent application across all types of licenses, and a predictable basis for decommissioning planning. In addition it would eliminate protracted delays in decommissioning which result as licensees wait for NRC to promulgate regulatory criteria before proceeding with decommissioning of their facilities.

**DATES:** Submit comments December 20, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format, by calling the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, 1–800–880–6091 (58 FR 37760; July 13, 1993). The bulletin board may be accessed using a personal computer, a modem, and most commonly available communications software packages. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Use ANSI or VT–100 terminal emulation. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board. For more information call Ms. Christine Daily, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 415–6026; FAX (301) 415–5385.

Documents related to this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Many of these documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking.

Single copies of the regulatory analysis may be obtained by written request from RPHEB Secretary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Single copies of the draft generic environmental impact statement (NUREG–1496): "Background as a Residual Radioactivity Criterion for Decommissioning, Appendix A to the GEIS in Support of Radiological Criteria for Decommissioning Nuclear Facilities" (NUREG–1501); or the staff's working draft regulatory guidance (NUREG–1500) may be obtained by written request or telefax (301–504–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC requests public comment on the draft generic environmental impact statement (NUREG–1496). Comments on NUREG–1496 may be submitted to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments on NUREG–1496 to 11545 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments on NUREG–1496 may be submitted electronically as indicated elsewhere under the **ADDRESSES** heading.

**FOR FURTHER INFORMATION CONTACT:** James C. Malaro, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6201.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

The Nuclear Regulatory Commission is proposing to amend 10 CFR Part 20 of its regulations to provide specific radiological criteria for the decommissioning of lands and structures.

The NRC is using an enhanced participatory process for developing the criteria. This process included a series of seven workshops held from January through May 1993. The workshops were conducted at a very early stage of rulemaking to enhance participation of interested parties and the public with the following objectives: (a) To ensure that the relevant issues have been identified; (b) to exchange information on these issues; and (c) to identify underlying concerns and areas of disagreement, and, where possible,

approaches for resolution. In July 1993, the NRC staff also conducted eight scoping meetings for the development of the Generic Environmental Impact Statement (GEIS) supporting the rulemaking.

The proposed criteria would apply to the decommissioning of all facilities licensed under 10 CFR Parts 30, 40, 50, 60, 61, 70, and 72, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, (AEA) and the Energy Reorganization Act of 1974. The Commission would apply these criteria in situations where remediation of radioactive material residues resulting from use or possession of Source, Byproduct, and Special Nuclear Material is undertaken. For high-level and low-level waste disposal facilities (10 CFR Parts 60 and 61), the criteria would apply only to ancillary surface facilities that support radioactive waste disposal activities because criteria for closure of the remainder of the facility and termination of the license are specified in 10 CFR Parts 60 and 61. For uranium mills, the criteria would apply to decommissioning of the facility but not to soil cleanup or the disposal of uranium mill tailings, which is covered in Appendix A of 10 CFR Part 40 and Environmental Protection Agency standards in 40 CFR Part 192. The criteria would apply to decommissioning of nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. However, they would not apply to sites currently covered by a decommissioning plan approved by the Commission before the effective date of this rule, if it is adopted as a final rule.

The purpose of the rulemaking is to ensure that decommissioning will be carried out without undue impact on public and occupational health and safety and the environment. The proposed amendments enhance the existing regulatory framework by providing a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. The Commission has developed the basis for the residual contamination levels in light of changes in basic radiation protection standards, improvements in remediation and radiation detection technologies, decommissioning experience obtained during the past 15 years, and comments received from workshops held as part of this rulemaking effort.

Current regulations do not explicitly address radiological criteria for decommissioning.[1] The NRC presently allows decommissioning on a site-specific basis using existing guidance.[2] However, the Commission believes that codifying radiological criteria for decommissioning in the regulations would allow the NRC to more effectively carry out its function of protecting public health and the environment at decommissioned sites by providing for more efficient use of NRC and licensee resources, consistent application across all types of licenses, and a predictable basis for decommissioning planning. In addition, it would eliminate protracted delays in decommissioning which result as licensees wait for NRC to promulgate regulatory criteria before proceeding with decommissioning of their facilities.

## Background

The Nuclear Regulatory Commission (NRC) has the statutory responsibility for protection of health and safety and the environment related to the possession and use of source, byproduct, and special nuclear material under the AEA. One part of NRC's responsibility is to ensure safe and timely decommissioning of the nuclear facilities that it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as previously defined by the NRC, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.[3]

Under the AEA and Reorganization Plan No. 3 of 1970, the Environmental Protection Agency (EPA) has the statutory responsibility to establish generally applicable standards for protection of the public from radioactive material (i.e., outside the NRC licensees site boundaries). The NRC is responsible for ensuring, through licensing requirements and other restrictions, that activities at facilities under NRC jurisdiction do not lead to radiation doses outside the facility boundaries that exceed EPA's generally applicable standards. For this reason, NRC has been coordinating closely with EPA in the development of the proposed decommissioning standards.

A Memorandum of Understanding (MOU) signed by NRC and EPA in March 1992 provides a basic framework within which NRC and EPA will endeavor to resolve issues of concern relating to the regulation of radionuclides in the environment. Under the guidelines of the MOU, EPA will make a determination as to whether the proposed decommissioning standards provide a sufficient level of protection for public health and safety and the environment. If EPA concludes that the NRC standards are sufficient, EPA will publish its findings in the **Federal Register** for notice and comment and propose that NRC licensees be exempt from the standards developed by EPA for non-NRC licensed facilities.

Decommissioning activities are initiated when a licensee decides to terminate licensed activities. Decommissioning activities do not include the removal and disposal of spent fuel, which is considered to be an operational activity or the removal and disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license. Disposal of nonradioactive hazardous waste not necessary for NRC license termination is not covered by these regulations but would be treated by other appropriate agencies having responsibility over these wastes. If nuclear facilities are to be reused for nuclear purposes, applications for license renewal or amendment, or for a new license are to be submitted according to the appropriate existing regulation. Reuse of a nuclear facility for other nuclear purposes is not considered decommissioning because the facility remains under license.

[1] On June 27, 1988 (53 FR 24018), the Commission published a final rule on General Requirements for Decommissioning Nuclear Facilities. However, this rule did not specifically address radiological criteria for decommissioned sites.

[2] Regulatory guidance, criteria, and practices include the following with emphasis on contamination levels that are As Low as Reasonably Achievable (ALARA): "Disposal or On-site Storage of Thorium or Uranium from Past Operations" Branch Technical Position, October 23, 1981, 46 FR 52061; "Termination of Byproduct, Source, and Special Nuclear Materials Licenses," Policy and Guidance Directive FC 83–23, November 4, 1983; "Termination of Operating Licenses for Nuclear Reactors" Regulatory Guide 1.86, June 1974; letter to Stanford University from James R. Miller, Chief, Standardization and Special Projects Branch, Division of Licensing, Office of Nuclear Reactor Regulation, NRC, Docket No. 50–141, April 21, 1982; "National Primary Drinking Water Standards," 40 CFR 141; "Radiation Dose Guidelines for Protection Against Transuranium Elements Present in the Environment as a Result of Unplanned Contamination," 42 FR 60956, November 30, 1977. Guidance is specified in terms of acceptable levels of residual contamination at decommissioned sites.

[3] See, for example, 10 CFR 40.4.

After licensed activities have ceased, licensees are required to decommission their facilities so that their licenses can be terminated. At present, this requires that radioactivity in land, groundwater, surface water, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then demonstrate that all facilities have been properly decontaminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

There are currently about 22,000 licensees in the United States. About one-third of these are NRC licensees, while the remainder are licensed by Agreement States through agreements entered into under Section 274 of the AEA. Licensees include utilities, nuclear fuel fabricators, universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 75 percent of NRC's 6,700 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Sealed sources, including items such as check sources, do not pose a contamination problem unless the encapsulation is broken. Decommissioning of these facilities is typically simple because there is usually little or no residual radioactive contamination to be removed and disposed of.

Of the remaining 25 percent, certain types of facilities (e.g., radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations which could produce substantial radioactive contamination in portions of the facilities. At these sites, lands, facilities, or equipment may become contaminated through the use of radioactive material in forms which have not been encapsulated to prevent the spread or dispersal of material. When radioactive material in unsealed forms is used, such as in the nuclear fuel fabrication industry, in production of radiopharmaceutical medicines, or in research, the equipment used to process and handle the material becomes contaminated by the small quantities of material that adhere to surfaces of valves, piping, etc. If material is spilled, then the area of the spill becomes contaminated. These facilities will have to be decontaminated to acceptable levels before they can be released for unrestricted use and their licenses terminated. The population of nuclear fuel cycle facilities which will require decommissioning includes approximately 100 nuclear power plants (at 70 sites); 50 non-power (research and test) reactors; 10 major fuel facilities (fuel fabrication and uranium hexafluoride production plants); 50 uranium mills; and 10 independent spent fuel storage installations. It is estimated that about 1,800 other NRC-licensed facilities could require significant remediation as part of decommissioning.

Essentially everything that comes in contact with radioactive material must be considered contaminated and checked for the presence of residual radioactive material. Areas surrounding facilities could become contaminated by the movement of materials, equipment, and people into and out of the areas containing the radioactive material. NRC requires that contamination control procedures be used to minimize or prevent the movement of radioactive materials into other areas. Nevertheless, some areas may become contaminated over the course of time due to breakdowns in the control procedures. Contamination may also be spread by the movement of water or other fluids containing the radioactive materials through or along piping, equipment, walls, floors, sumps, drains, etc. In some cases, this has resulted in the release of significant quantities of radioactive material into the ground under or around buildings and facilities.

In addition to contamination, some licensed operations can produce radioactive materials through the process of activation. In this process, materials become radioactive when they are bombarded by neutrons generated in certain nuclear operations. Examples of such operations include nuclear reactors, where metal reinforcing bars in concrete surrounding the reactor vessel may become radioactive through neutron bombardment. These activated materials may also need to be removed or disposed of during decommissioning.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and have to be decommissioned. Thus, both the number and complexity of facilities that will require decommissioning are expected to increase.

The NRC has a program underway to effect timely decommissioning of about 50 sites, which warrant special NRC oversight either because they have not been decommissioned properly in the past or have been engaged in the decommissioning process for an extended period. The Commission has established a Site Decommissioning Management Plan (SDMP), NUREG–1444, October 1993) for effecting timely decommissioning of these problem facilities. Sites being handled under the SDMP vary in degree of radiologic hazard, cleanup complexity, and cost. Some sites comprise tens of acres that require assessment for radiological contamination, whereas other sites have contamination known to be limited to individual buildings or discrete piles of tailings or contaminated soil. Many sites involve active licenses, but some sites involve formerly licensed sites, or sites where the responsible party is unable or unwilling to perform cleanup. These sites also vary in degree of completion of decommissioning. At some sites, little or no decontamination work has been done; whereas at other sites, decommissioning is underway or license termination is in the offing.

The effort to have these SDMP sites remediated and decommissioned has been hampered in part because licensees view the absence of definitive radiological criteria as an incentive to defer decommissioning pending issuance of formal NRC requirements. The General Accounting Office (GAO), which has been critical of the Commission's inability to effect timely decommissioning of these sites, has recommended that the NRC enhance its decommissioning efforts by reconsidering its radiological criteria for decommissioning.[4]

Until new criteria are in place, the Commission intends to proceed with decommissioning nuclear facilities on a site-specific basis considering existing criteria coupled with the concept that residual radioactivity be as low as is reasonably achievable (ALARA). Case and activity-specific decisions concerning decommissioning of sites will continue to be made as necessary during the pendency of this rulemaking process. Because the SDMP sites could pose unnecessary environmental and public risks or financial burdens if they are not decommissioned in a timely manner, the Commission's effort to

[4] GAO Report to Congress, "NRC's Decommissioning Procedures and Criteria Need to Be Strengthened," GAO/RCED–89–119, May 1989.

effect timely decommissioning of these sites has been proposed in the Federal Register on January 13, 1993, (58 FR 4099). The NRC published an Action Plan to ensure timely remediation of sites listed in the SDMP in the Federal Register on April 16, 1992 (57 FR 13389). The NRC does not intend to require additional remediation of sites in response to criteria established in this rulemaking, provided that the licensee or responsible party has already remediated the site or was in the process of remediating the site in full accordance with an NRC-approved decommissioning plan at the time of promulgation.

Internationally, most efforts have been focused upon development of criteria for waste disposal and recycle of radioactively contaminated materials using guidance published by the International Atomic Energy Agency. Decommissioning criteria have generally been established on a case-specific basis. This approach is the same as the current approach employed in the United States pending the development of radiological criteria through formal requirements. The NRC staff is not aware of other international efforts similar to this rulemaking to define radiological criteria for decommissioning.

**The Enhanced Participatory Rulemaking Process**

The normal pattern for NRC rulemaking is the development of a proposed rule by the NRC staff for Commission consideration, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, and preparation of a final rule, as appropriate, for Commission approval. As directed and approved by the Commission, the NRC staff has enhanced participation in the early stages of this rulemaking process through a series of workshops for affected interests. These workshops were held from January through May 1993 in Chicago, IL; San Francisco, CA; Boston, MA; Dallas, TX; Philadelphia, PA; Atlanta, GA; and Washington, DC. The workshops elicited informed discussions of options and approaches for developing radiological criteria, and the rationale for options and approaches. While these workshops were not designed to seek "consensus" in the sense that there is agreement on how each issue should be resolved, the workshops were conducted at a very early stage of rulemaking to enhance participation of interested parties and the public with the following objectives:

(a) To ensure that the relevant issues have been identified;

(b) To exchange information on these issues; and

(c) To identify underlying concerns and areas of disagreement, and, where possible, approaches for resolution.

The Commission hopes that the interactions among the participants in the workshop environment also fostered a clearer mutual understanding of the positions and concerns of all participants. These workshops provided a number of themes, such as consideration of restricted use options, increased public participation in the site decommissioning process, and a desire to return sites to levels indistinguishable from natural background, that form the basis upon which the Commission has developed the provisions of this rulemaking. Comments made at these "Scoping Meetings," the workshops, and related written comments were considered by the NRC staff in its preparation of a staff draft rule as described in the paragraph below. Comments were also used, as appropriate, in developing the Draft Generic Environmental Impact Statement (GEIS) for the rule.

The Commission approved an additional opportunity for enhanced participation at an early stage of the rule development. Copies of the NRC staff's draft rule and summaries of comments received from workshop participants, NUREG/CR–6156, were sent to NRC Agreement States, workshop participants, and other interested parties on January 27, 1994. A notice of availability of these documents was published in the Federal Register, and the documents were placed on the electronic bulletin board on February 2, 1994 (59 FR 4868). The intent of this informal comment period in advance of a proposed rule was to provide an opportunity for interested parties to comment on the adequacy of the draft criteria and the extent to which the criteria have considered the range of viewpoints expressed during the workshops and scoping meetings. The comment period ended on March 11, 1994.

Concurrent with the NRC rulemaking on radiological criteria for decommissioning, the EPA is proceeding to develop standards and guidance for Federal agencies in the area of radiation protection, including standards for the cleanup of contaminated sites. The EPA National Advisory Council on Environmental Policy and Technology and the Subcommittee on Residual Radioactivity held public meetings in October 1993, February 1994, and May 1994 to discuss the issues associated with the EPA rulemaking. The NRC and EPA have coordinated their efforts in this area in order to ensure that effective and consistent site cleanup standards are established while minimizing duplication of effort. Accordingly, the EPA was an important participant in the NRC rulemaking workshops and is a cooperating agency in the preparation of the GEIS for the rulemaking. The NRC has also consulted extensively with EPA throughout the rulemaking process. It is anticipated that the information gathered during the workshops on the NRC standards will also be relevant and useful to the EPA efforts in the area of site cleanup standards. The objective of the NRC and EPA cooperative efforts is to attempt to reach an agreement that the NRC standards established in the enhanced participatory rulemaking are sufficient to provide adequate protection to the public health and safety for NRC-licensed sites. The EPA efforts could then focus on the site clean-up standards for non-NRC licensed sites, such as DOE and DOD facilities. This is consistent with the principles and procedures set forth in a Memorandum of Understanding between the NRC and EPA published on November 16, 1992 (57 FR 54127), to guide each agency's actions in areas of mutual regulatory concern.

The next two sections of this notice summarize the comments from the workshops and the comments on the NRC staff draft rule. The purpose of these summaries is to document the public comments and the NRC response to these comments, and to show how the NRC approach to the rulemaking has evolved as a result of public participation in the rulemaking process.

**Comments From Workshops**

On December 11, 1992 (57 FR 58727), the Commission published in the Federal Register a notice that it was preparing to initiate rulemaking on establishing radiological criteria for the decommissioning of NRC-licensed facilities. The notice listed a schedule for seven workshops throughout the United States beginning in January 1993. The purpose of the workshops was to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing radiological criteria for decommissioning. Written comments on approaches and issues also were solicited.

On June 18, 1993 (58 FR 33570), the Commission published in the Federal Register a notice of intent to prepare a Generic Environmental Impact Statement (GEIS) as part of the

rulemaking action on radiological criteria for decommissioning. The notice listed eight meetings throughout the United States to be held in July 1993 for the purpose of discussing and receiving public comment on what should be covered in the GEIS.

*Overview of Comments*

Over 7,000 comments were presented at the seven Workshops, eight scoping meetings, and in related letters. The NRC staff considered these comments in the development of the NRC staff's draft rule which was sent to NRC Agreement States, workshop participants, and other interested parties on January 27, 1994. Comments were also used, as appropriate, in developing the Draft GEIS for the rule.

NRC held rulemaking workshops in Chicago, IL; San Francisco, CA; Boston, MA; Dallas, TX; Philadelphia, PA; Atlanta, GA; and Washington, DC between January and May 1993. The workshop comments have been summarized in NUREG/CR–6156, "Summary of Comments Received from Workshops on Radiation Criteria for Decommissioning." This report summarizes 3,635 comments categorized from transcripts of the seven workshops and 1,677 comments from 100 NRC docketed letters from individuals and organizations. NUREG/CR–6156 merely catalogues the comments and viewpoints; no analysis or response to the comments is included.

The comments reflect a broad spectrum of viewpoints on the issues related to radiological criteria for decommissioning and associated subjects. The comments show little evidence of general agreement on issues except that most parties appear to agree that (1) the rulemaking should proceed and (2) the Commission's activities in decommissioning should recognize that it is not reasonable to expect all nuclear facilities to be remediated to a level that permits termination of the license and release of the facility for unrestricted use. While a number of additional themes emerged from the workshops, these themes cannot be characterized as having the general agreement of all of the workshop and meeting participants.

Transcripts of the workshops and scoping meetings and copies of related letters are available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

The NRC also held public meetings on the scope of the GEIS during July 1993 in Washington, DC; San Francisco, CA; Oklahoma City, OK; and Cleveland, OH. Comments from these meetings were reviewed and comments which differed substantially from those from the workshops are also summarized in the body of NUREG/CR–6156. A summary of all of the comments from the GEIS scoping meetings is included as Appendix E to the GEIS.

*Summary and Discussion of Comments*

1. Need For and Scope of Rule

*Comment.* Almost all commenters supported the NRC's plans to develop radiological decommissioning standards and recommended that the rulemaking go forward expeditiously. Some commenters recommended that the NRC consider and possibly establish both radiological and chemical decommissioning standards. Most commenters stated that the NRC should establish standards for both unrestricted and restricted release of sites.

*Response.* The NRC is proceeding with a rulemaking which will establish radiological criteria for decommissioning. NRC's schedule calls for issuance of a final rule by May 1995.

NRC's authority is limited by law primarily to ensuring protection of the public health and safety from radiological and nuclear hazards associated with source, special nuclear, and byproduct material. NRC has refrained from extending its reach to address non-radiological hazards except where specifically authorized by Congress (e.g., uranium mill tailings) or where these hazards would not otherwise be adequately controlled because of a regulatory void. Consequently, NRC is not proposing to include provisions in the radiological criteria to address non-radiological hazards. Although the rule would not establish criteria for disposition of nonradioactive hazardous and other wastes, licensees are reminded that they must continue to meet applicable Federal, State, and local standards for disposition of these wastes. The proposed rule provides for both unrestricted release and restricted termination of the license. If a licensee cannot satisfy the conditions for license termination, the license will not be terminated.

2. Basis for Radiological Criteria

*Comment.* Several commenters recommended that NRC decommissioning standards be based on and be consistent with the scientific information and advice of such organizations as the National Council on Radiation Protection and Measurements (NCRP) and the International Commission on Radiological Protection (ICRP). One commenter suggested that the NRC should determine whether the standards are to be technologically-based or politically-based; if the latter, do not waste time on technological input.

*Response.* It should be noted that the NRC and its predecessor agency, the Atomic Energy Commission, have generally followed the basic radiation protection recommendations of the ICRP; its U.S. counterpart, the NCRP; and the EPA Draft Federal Radiation Protection Guidance for Exposure to the General public in formulating basic radiation protection standards. Recommendations of the ICRP and the NCRP were relied on in the revised "Standards for Protection Against Radiation," which was published May 21, 1991 (56 FR 233360), and implemented by licensees on or before January 1, 1994. The proposed radiological criteria for decommissioning continues this practice but the proposed rule also recognizes the public's interest in and potential for contributing to the decommissioning process. The public's involvement through participating in the development of the criteria in this rulemaking, opportunities for review of decommissioning plans, as well as through participation on Site-Specific Advisory Boards as specified in this rule are expected to aid in the conduct of a decommissioning program that is understandable, technologically sound, and responsive to the concerns of affected parties.

*Comment.* Several commenters recommended that the NRC consider adopting a risk limit standard equating to a radiation dose of 25 to 100 millirem per year. According to two commenters, a 100 millirem per year limit would increase the cancer risk in the population only slightly above its normal incidence rate. One commenter believes that radiation damage per unit of exposure may increase at smaller doses. Other commenters stated that there may be a threshold for radiation effects and that there may be no adverse health effects at low radiation levels.

*Response.* In the Supplementary Information for the revised "Standards for Protection Against Radiation," the NRC stated that the standards are based upon the assumptions that:

(1) Within the range of exposure conditions usually encountered in radiation work, there is a linear relationship, without threshold, between dose and probability of occurrence of stochastic (random) health effects such as latent cancer and genetic effects;

(2) The severity of each type of stochastic health effect is independent of dose; and

(3) Nonstochastic (nonrandom) radiation-induced health effects can be prevented by limiting exposures so that doses are below the thresholds for their induction.

In the absence of convincing evidence that there is a dose threshold or that low levels of radiation are beneficial, the staff believes that the assumptions regarding a linear nonthreshold dose-effect model for cancers and genetic effects and the existence of thresholds only for certain nonstochastic effects are prudent for formulating radiation protection standards and planning radiation protection programs.

The NRC staff believes the dose limits and ALARA requirements of the proposed radiological criteria for decommissioning provide a reasonable basis for protection of public health and safety and the environment. However, the staff has also determined that decommissioning activities should not be allowed the entire dose limit of 100 mrem/y for members of the public. The staff has selected a value which is a relatively small fraction of the limit, consistent with other decisions of both the EPA and NRC for unrestricted access to areas.

*Comment.* Many commenters recommended that the NRC establish a risk/dose limit on the order of the variability of natural background radiation occurring across the United States as its decommissioning standard. The reasons given were that no health risks are attributable to background radiation variations and studies show that there is no increase in cancer incidence over a wide range of background radiation in the U.S.

*Response.* The NRC staff believes that the overall objective for decommissioning should be the return of the facility to levels approximating background. However, the NRC staff recognizes that demonstrating that radioisotope levels at a site are indistinguishable from background will be a complex task involving sophisticated sampling, measuring, and statistical analysis techniques. The NRC staff also recognizes that the difficulty of the task can vary substantially depending on a number of factors including the radionuclide in question, the background level for that and other radionuclides at the site, and the temporal and spatial variations in background radiation at the site.

Therefore, in the draft rule, the NRC staff proposed as a goal of the ALARA process that the Total Effective Dose Equivalent (TEDE) to the average member of the Critical Group from all radionuclides that could contribute to residual radioactivity and are distinguishable from background not exceed 3 mrem (0.03 mSv) per year. Demonstration of achieving this dose criterion would be considered as the only demonstration necessary to meet the proposed ALARA requirements of the rule. One of the reasons 3 millirem per year was selected is because variations of this magnitude typically are not distinguishable from the variation of dose from background radiation. Three mrem/y is well within the variability of natural background radiation across the U.S. and also within those variations experienced seasonally at particular sites. Based upon comments received on the NRC staff draft, the Commission has decided to remove the 3 millirem per year value from the proposed rule (see discussion under "Comments on NRC Staff Draft").

3. Individual vs Collective Doses.

*Comment.* Several comments were made concerning how risk standards should be applied to the population who may be exposed to residual radioactivity at a released site. Most commenters favored applying a risk limit to individuals and believed it unnecessary to specify a collective dose limit (i.e., a limit on the cumulative dose in person-rem/y to the entire exposed population). One commenter remarked that if collective dose is used, it should be applied in a comprehensive manner. For example, in evaluating an appropriate cleanup standard, the doses to the public from transporting material off site for disposal should be evaluated against the doses received by the public around the site if the material is left in place.

*Response.* The NRC has considered both the collective doses to populations and the individual doses to the average member of the most highly exposed group of individuals (Critical Group). These considerations are reflected in the calculations presented in the GEIS prepared in support of this rulemaking. In the scenarios considered, the annual collective dose is quite small. Therefore, the staff concludes that limiting individual dose to the levels specified in the criteria will assure that collective doses will be small and that the public health will be adequately protected. This is consistent with past Commission practice in establishing radiological criteria.

4. Statement of Radiological Criteria

In developing the staff's draft rule, attention was focused on four approaches: (1) establish an annual risk or dose limit for an individual, (2) establish an annual risk or dose goal, (3) require use of best available technology, and (4) require return of the site to background radioactivity.

*Comment.* Most commenters from State governments, the nuclear utilities, the fuel cycle industry, the medical community and non-fuel cycle industry, cleanup contractors, and professional society/standard setting organizations favored a risk-based or dose-based standard over a standard based on best available technology or return to background. Most commenters from citizen/environmental organizations and some from other organizations favored a return-to-background standard. Many commenters objected to a best effort/best available technology standard for various reasons including the belief that it would be extremely subjective.

*Response.* The proposed rule would establish a dose limit for release of the site of 15 millirem per year (mrem/y) TEDE for residual radioactivity distinguishable from background and require that the licensee reduce this residual radioactivity to ALARA. Sites meeting this criterion would be considered acceptable for release for unrestricted use and termination of the license. Fifteen mrem/y TEDE is consistent in terms of risk with the NRC release limits for low-level waste facilities (10 CFR 61.41), is consistent with the individual dose protection limit in the EPA Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-level and Transuranic Wastes, 40 CFR Part 191 (December 20, 1993; 58 FR 66398), and provides a substantial safety margin below the NRC's 100 mrem/y dose limit for individual members of the public. Use of a dose limit is consistent with long standing NRC (and AEC) regulatory practices for protecting radiation workers and the public. The use of a limit also provides a clear measure for determining the acceptability of a site and a clear basis for determinations of compliance with the regulations.

The NRC staff agrees that the objective of decommissioning should be to reduce residual radioactivity at a site to levels that are indistinguishable from background. Therefore, the draft rule proposed to establish the following goal for decommissioning within the structure of reducing exposure below the limit to as low as reasonably achievable:

(1) Reduce the concentration of individual radionuclides which could contribute to residual radioactivity at the site to a level which is indistinguishable from background;

(2) Release the site for unrestricted use; and

(3) Terminate the license.

For purposes of determining when further ALARA efforts need not be further analyzed and documented, the Commission would consider that the ALARA requirement has been met if the TEDE to the average member of the critical group from all radionuclides that could contribute to residual radioactivity and are distinguishable from background does not exceed 3 mrem (0.03 mSv) per year. Three millirem per year is a small fraction of the NRC's 100 mrem/y dose limit for individual members of the public, typically is not distinguishable from variations in local and national radiation background levels, and is consistent with the $10^{-4}$ level of lifetime risk used by EPA for Superfund. Dose based criteria were selected over risk based criteria for ease of implementation. Based upon comments received on the NRC staff draft, the Commission has decided to remove the numerical values of 3 millirem per year from the proposed rule. However, the Commission remains committed to the objective of decommissioning to levels that are indistinguishable from background.

5. Consistency and Compatibility

*Comment.* Many commenters urged that all regulatory agencies (EPA, NRC, State and local governments, etc.) use the same radiological criteria for decommissioning and that the agencies be consistent in how they apply the criteria. Some commenters said that the NRC's adoption of a risk/dose limit of 100 millirem per year, with a proper application of ALARA, would result in a $10^{-6}$ annual risk and a $10^{-4}$ lifetime risk, which would be consistent with the EPA's Superfund remediation goals. Other commenters recommended that State and local governments be at liberty to adopt more stringent requirements.

*Response.* The NRC is hopeful that the proposed criteria developed through the enhanced participatory rulemaking process will be acceptable to all regulatory agencies and will be consistent and compatible with the requirements of other regulatory agencies. The EPA and NRC have overlapping authority in the area of developing radiological criteria for decommissioning for nuclear sites. In addition, decommissioned sites, if not remediated properly, could later be subject to remedial action under EPA Superfund requirements. This is an outcome which is viewed as undesirable by both the EPA and NRC and is considered unlikely because the proposed NRC criteria are designed to be consistent with the risk range incorporated in EPA's Superfund requirements. NRC and EPA are developing decommissioning criteria in parallel rulemaking efforts. The NRC and EPA are coordinating their efforts in this area to ensure that effective and consistent site decommissioning standards are established while minimizing duplication of effort. Accordingly, the EPA was an important participant in the NRC rulemaking workshops and is a cooperating agency in the preparation of the GEIS for the rulemaking. The NRC has also consulted extensively with EPA throughout the rulemaking process. The objective is that EPA will be able to make a finding that NRC decommissioning criteria provide adequate protection for the public and the environment and will exclude NRC licensees from the EPA cleanup standards. In addition, State and local governments will have opportunities to participate in certain individual decommissioning actions carried out under the proposed regulation. Further discussion on participation may be found in item 7, below. Agreement State compatibility is discussed briefly in a separate section near the end of this supplementary information.

6. Finality

*Comment.* Several commenters stated that the NRC's decommissioning standard should be long-lasting and provide a final solution for decommissioning sites that are contaminated with radioactive material. The NRC's standard should be consistent with EPA rules to assure that a site remediated under NRC's rules will not require further remediation under EPA rules.

Some commenters questioned whether it is possible to have finality in decommissioning standards because of likely new information and improved technology in the future. They stated that sites should continue to be remediated as necessary to meet new standards. Those opposed stated that rules should be changed only if a substantial increase in public safety can be demonstrated.

*Response.* The NRC staff believes that actions taken under the criteria in this rule need not be revisited unless, based on new information, there is reason to believe that residual radioactivity remaining at the site could result in significant public risk. Therefore, once a site has been decommissioned and the license terminated in accordance with the criteria in the rule, the Commission would require additional cleanup only if, based on new information, it determines the level of residual radioactivity at the site substantially violates these criteria.

Based on the NRC's experience in the SDMP and other decommissioning programs, it is important to provide a high level of assurance that decommissioning actions conducted under the current criteria will not need to be revisited in the future under potentially more restrictive criteria. Licensees have indicated a genuine reluctance to commit the large financial and corporate resources necessary for complex decommissioning projects without these assurances. Uncertainty with future criteria and the potential need for additional remediation introduces havoc in the planning and conduct of effective decommissioning. Without some degree of finality in the criteria, licensees may be motivated to forestall decommissioning actions pending development of more favorable criteria or less expensive decommissioning technologies and waste disposal options. This approach manifests itself in extended administrative appeals and litigation, which often redirects licensee resources away from efforts to reduce levels of contamination.

At the same time, the NRC recognizes that there may be legitimate needs for additional remedial actions in the future if significant additional contamination is discovered at a site or if the technical basis on which the criteria are founded changes significantly, indicating that potential future residents of the sites may be at significantly greater risk than previously anticipated. Therefore, the proposed criteria allow for additional remediation, if necessary, if additional significant contamination is identified or if changes in the risk or health basis for the criteria indicate the remediation is necessary to protect the public against significant radiological risks.

As noted in item 5, the EPA and NRC are working together closely in this rulemaking. Upon completion, the EPA will determine through a formal notice and comment rulemaking whether the NRC's rule provides adequate protection for public health and the environment. This should minimize the risk that in the future the EPA would require additional cleanup of a site which has been decommissioned in accordance with the criteria in this rule.

7. Community Involvement

*Comment.* Many commenters recommended that the rulemaking should provide for and ensure local citizen group participation in overseeing the decommissioning of contaminated

sites and the enforcement of requirements. Also, the role of tribal authorities should be addressed. Some commenters stated that the NRC should ensure citizen participation in decommissioning from the earliest stage of cleanup.

*Response.* The NRC staff believes it is important for the public to not only be fully informed of the decommissioning actions at a particular site but also to be able to effectively participate in site decommissioning decisions. The proposed rule provides specific mechanisms for public participation in the decommissioning process, where participation is important to ensuring that the public is adequately informed about proposed decommissioning activities or that the public and environment are adequately protected in conjunction with reliance on institutional controls to restrict site access after license termination. These activities are in addition to whatever hearing opportunities are provided for a particular category of site by the Commission's existing requirements.

Upon the receipt of a decommissioning plan from the licensee, or a proposal by the licensee for restricted release of a site, or whenever the Commission deems such a notice to be in the public interest, the Commission will:

(1) Notify local and State governments in the vicinity of the site and Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning;

(2) Publish a notice in the **Federal Register** as well as in other media, such as local newspapers, which are readily accessible to individuals in the vicinity of the site; and

(3) Solicit public comment on the proposed decommissioning action.

For decommissioning actions where the licensee proposes to request license termination with land use restrictions, the licensee will be required to convene a Site Specific Advisory Board (SSAB) for the purpose of obtaining advice from affected parties regarding the proposed decommissioning. The SSAB will function at the planning stages of decommissioning, at the time the licensee is developing the decommissioning plan for the facility. The purpose of the SSAB is to provide recommendations to the licensee on:

(1) Whether there are ways to reduce residual radioactivity to the levels that will permit release for unrestricted use which are technically achievable, will not be prohibitively expensive, and will not result in net public or environmental harm;

(2) Whether provisions for institutional controls proposed by the licensee will:

(a) Provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the Critical Group will not exceed 15 mrem (0.15 mSv) TEDE per year,

(b) Be enforceable,

(c) Impose undue burdens on the local community or other affected parties; and

(3) Whether the licensee has provided sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site.

The licensee will be responsible for establishing the SSAB and developing appropriate ground rules and operating procedures with the SSAB's advice.

SSAB membership, to the extent that representatives are willing to participate, will have to:

(1) Reflect the full range of interests in the affected community and region and be composed of individuals who could be directly affected by residual radioactivity at the decommissioned site, and

(2) Include representatives from the licensee; local and State governments; workers; persons residing in the vicinity of the site; citizen, environmental, environmental justice, and other public interest groups; and Indian Nation or other indigenous people that have treaty or statutory rights that could be affected.

SSAB meetings will be open to the public. The licensee will be required to provide adequate public notice of the location, time, date, and agenda for the meetings at least two weeks in advance of each meeting. All records generated or reviewed by the SSAB will become part of the decommissioning docket and be available for public inspection.

8. Stability and Flexibility

*Comment.* Several commenters stated that NRC decommissioning standards are needed to facilitate long-term planning by the nuclear industry and to provide stability against constantly changing criteria over the years. Some commenters stated that even generic standards may not be completely stable because they will need to be changed as a result of newly perceived health effects and improvements in technology.

Many commenters indicated that the rule must be flexible enough to accommodate site differences, e.g., types of radionuclides present, the geology and environmental surroundings, individuals who may be exposed, and possible exposure patterns.

Most commenters favored a generic standard over site-specific standards. While supporting the establishment of a generic standard, some urged the NRC to permit site-specific considerations and site-specific modeling for licensees to demonstrate compliance and to ensure participation by local communities. One commenter stated it would be a mistake to use a generic ALARA evaluation for all sites. Several commenters recommended site-specific ALARA assessments. Some commenters, particularly in the GEIS scoping meetings, suggested that the rule only provide the process for establishing site-specific criteria.

*Response.* The staff agrees that there is a need for consistent and stable radiological criteria for the decommissioning of licensed nuclear facilities throughout the United States. Therefore, this rulemaking would establish a single set of radiological criteria that would apply to the decommissioning of all sites. However, the staff also recognizes the need for flexibility in applying these criteria because of constraints posed by site specific conditions (e.g. geology, hydrology, meteorology, and radiation background levels) and to provide opportunity for meaningful participation by local communities in individual decommissioning actions. Therefore, the rule proposed by the staff provides for site-specific implementation of the generic criteria. The Commission would also publish regulatory guidance along with the rule that describes methods for site-specific implementation of the criteria. This guidance includes conduct of site characterization and surveys, specific radionuclide concentration and surface activities that would be considered by the NRC staff to meet the decommissioning limit, and modeling acceptable to the NRC staff to develop more site-specific values of concentration or surface activity based upon the factors unique to the activity being decommissioned. In this regard, the NRC is working with the EPA and the DOE to develop a Federal Government manual for the conduct of surveys to determine compliance with decommissioning criteria. When completed, this effort will assist in the consistent treatment of all sites requiring remediation.

The NRC staff believes that generic criteria should be established for decommissioning and that codifying radiological criteria for decommissioning in the regulations would:

(1) Allow the NRC to more effectively assure protection of public health and

the environment at decommissioned sites;

(2) Result in more efficient use of NRC and licensee resources;

(3) Lead to more consistent and uniform application across all types of licenses;

(4) Provide a more stable basis for decommissioning planning; and

(5) Eliminate protracted delays in decommissioning that result as licensees wait for generic regulatory criteria before proceeding with decommissioning of their facilities.

The NRC does not favor the option suggested of providing a process based rule whereby the criteria codified would only be for the process to be used in establishing site-specific radiological criteria. This approach would be essentially the same as the option of remaining with the current *status quo*. In general, a site-specific approach can lead to considerable delays and increased uncertainty on the part of all parties associated with the decommissioning. Further, this approach would be inappropriate and burdensome for the large number of licensees using sealed sources or radionuclides with relatively short half-lives.

9. ALARA Considerations

*Comment.* Under the ALARA concept, decommissioning activities are continued beyond meeting applicable risk/dose limits in efforts to reduce radiation exposures As Low As Reasonably Achievable (ALARA). Most commenters recommended that the NRC's radiological criteria should incorporate this principle. Several commenters stated that State and local governments should be involved in ALARA determinations. However, other commenters expressed distrust of the licensees' and regulatory agencies' application of the ALARA process because it involves financial tradeoffs and licensees are motivated to maximize their profits.

*Response.* The proposed rule requires application of the ALARA concept, provided that potential doses are constrained within limiting doses under a range of conditions. NRC anticipates that many licensees, particularly sealed source users or those who use relatively short-lived radioactive materials, will be able to satisfy the ALARA criteria with an analysis of projected dose levels. In these cases, extensive additional documentation to support an ALARA determination would not be required. State and local governments and other affected parties will be involved in ALARA determinations through opportunities to comment on decommissioning proposals and participation on the Site-Specific Advisory Board in those cases where the licensee is seeking license termination under restricted conditions. This level of involvement provides for transparent application of the ALARA considerations and safeguards against excessive licensee attention to cutting costs to maintain profit margins.

*Comment.* Many commenters stated that for the most effective use of resources and fairness, the NRC must consider in the risk-benefit balance not only radiological risks to workers and the public but, also, non-radiological risks and indirect risks associated with the regulation of decommissioning activities.

*Response.* The staff agrees that all significant public and environmental risks should be considered. The GEIS for this rulemaking assesses both radiological and non-radiological impacts for the proposed rule and several alternative actions, including the alternative of no remedial action. In addition, the proposed rule would require that the licensee, when determining ALARA for a specific decommissioning, consider all significant radiological and non-radiological risks resulting from residual radioactivity and from the decommissioning process itself (including transportation and disposal of radioactive wastes generated in the process).

In some cases, the necessary ALARA analysis will go beyond the relatively simple cost-benefit analysis that has typically been applied in the nuclear industry in limiting worker exposures because the types of risks being considered are not things that can be easily quantified or compared. For example, transportation poses immediate risks in terms of fatalities due to highway accidents in hauling the radioactive contamination to appropriate disposal sites. Some individuals and organizations have suggested that these anticipated fatalities should not be considered as having the same seriousness or likelihood as the potential deaths at some point in the future of individuals that may inhabit former nuclear sites after license termination. ALARA, or perceptions of what should be considered as ALARA, may also vary because of values placed on minimizing the number of new disposal sites, preserving existing resources, or preserving viable industries for jobs. Each of these factors were discussed in the workshops, and the staff believes that these same factors may need to be considered in determining the ALARA level for remediation at a particular site. The NRC is developing guidance on how the ALARA process could be applied in evaluating alternative radiological criteria for decommissioning on a site-specific basis.

*Comment.* Another commenter stated that, "there is no ecological or conservation basis for establishing radiation protection standards different from those * * * involved in any other health issue for which benefits are weighed against costs."

*Response.* The NRC staff agrees with this stated conclusion that, as a guiding principle, radiation protection standards do not warrant different treatment than those for other health issues. In this regard, the staff has carefully considered both the criteria and the implementation of those criteria in other environmental remediation programs (e.g., the EPA Superfund program). The staff believes the criteria proposed in this rulemaking are generally consistent with those used in other environmental remediation programs.

*Comment.* Several commenters stated that cleaning up to any specified level is technically achievable and is simply a matter of how much it will cost. Some believed that decommissioning costs to return sites to unrestricted use could be so high that the sites should be kept under continued control and maintained as a restricted area. Some commenters suggested that money saved on unnecessary decommissioning activities might be used in other activities more beneficial to the public. Other commenters stated that money saved on decommissioning costs would not necessarily be available for societal betterment.

*Response.* The proposed rule recognizes that it may not be reasonable to remediate some sites to a level that permits release for unrestricted use. The costs involved, either in dollars or in potential harm to the environment or people, may be prohibitive. In these cases, the proposed rule provides for termination of the license under restricted conditions. The staff is also aware that in some unusual cases sites may have to remain under license indefinitely. For example, the NRC is aware of certain sites that are so contaminated by elevated levels of the naturally occurring radionuclides uranium, thorium, and their decay products that it would be extremely difficult and costly to satisfy the proposed criteria for unrestricted or restricted release. In these cases, the staff anticipates that the sites would have to remain under a license indefinitely until new, more efficient

technologies are developed or the financial resources become available to pay for more complete remediation. The Commission has no authority over expenditure of funds that might be saved by avoiding what were termed "unnecessary decommissioning activities."

10. Site Remediation

*Comment.* Several commenters stated that, although the cost of decommissioning could be high, remediation technologies are available for achieving whatever level is set by the NRC. The NRC should describe acceptable methodologies for remediation and measurement to reduce subjective judgments and should ensure that workers who perform remediation are appropriately trained and protected.

*Response.* Before the effective date of the final rule, the NRC will provide interim guidance for use and comment on acceptable methodologies for demonstrating compliance with the Commission's residual radioactivity criteria. After one to two years' implementation experience is gained from use of the interim guidance, the collected comments will be addressed and the final guidance will be issued. However, the NRC staff does not believe that it would be appropriate to prescribe, a priori, the methods to be used. Licensees must be able to take advantage of whatever safe methodologies may be available for achieving remediation that complies with the criteria for decommissioning.

Workers performing decommissioning must receive training in radiation protection according to the requirements of the Commission's requirements in 10 CFR 19.12, "Instructions to Workers." Likewise, workers participating in decommissioning activities will be subject to all of the provisions of 10 CFR Part 20, including requirements related to personnel monitoring, respiratory protection, occupational dose limits, and ALARA. In this regard, the staff does not view the conduct of decommissioning activities to be any different from other operational activities licensed by the Commission.

11. Demonstrating Compliance

*Comment.* Several commenters stated that demonstration of compliance with NRC decommissioning rules and applicable radiological limits is a major issue. The commenters believe the NRC must provide clear guidelines with respect to the kinds of measurements that are necessary and the models that are acceptable to demonstrate compliance. With respect to measurements, guidance should cover:

(1) Acceptable measurement methods;
(2) Extent of measurements needed;
(3) Use of field instruments versus laboratory instruments;
(4) Statistical sampling; and
(5) Calibration standards and measurement certification.

With respect to models and methodologies, guidance should be provided on their use, uncertainties, and how to apply site-specific characteristics. The NRC must make sufficient confirmatory measurements to check that the standards have been met and NRC should enforce the standards.

Several commenters pointed out that, whatever risk standard the NRC may adopt, compliance will likely need to be determined by a computer model except for small operations when contamination levels are within specified generic criteria. Other commenters stated that decontamination limits should be established and dose modeling should not be relied on to demonstrate compliance. Comments were split on whether risk limits might be needed for different exposure pathways.

*Response.* Before the effective date of the final rule, NRC plans to issue specific guidance that includes conservative radiation levels, surface contamination limits, and radioactivity concentrations for use by licensees who elect to apply a generic model to demonstrate compliance. Guidance on measurements covering the above listed five subjects will also be provided. The NRC appreciates that guidance is essential especially where the licensee must demonstrate compliance with criteria that require reduction of residual radioactivity to near background levels. The NRC expects to make sufficient confirmatory measurements to ensure compliance with the criteria.

The proposed rule limits the total exposure from all pathways and, except for the purpose of groundwater protection, does not set limits for individual pathways. The groundwater protection requirement has been included at the request of the EPA to ensure conformance with EPA groundwater protection requirements. Because exposure pathways vary in importance to public dose depending on the radioisotope involved, site-specific parameters, and the circumstances under which the site might be used after decommissioning, the staff believes that, as a general rule, no useful purpose would be served by placing limits on individual pathways. In the selection of conservative default values for use by licensees who do not wish to utilize site-specific modeling, the most critical pathways and scenarios of exposure are assumed to be dominant. The absence of limits on individual pathways provides the licensee with more flexibility in limiting radiation exposures while at the same time providing adequate overall public protection.

12. Sites Which Cannot Be Released for Unrestricted Use

*Comment.* Many commenters stated that the NRC should establish standards for both unrestricted and restricted release of sites while others recommended that the NRC require all sites to be remediated suitably for unrestricted use. Some commenters stated that sites should continue to be licensed by the NRC if they cannot be reasonably decontaminated. Also, commenters stated that the NRC should consider the option of restricted future use of decommissioned facilities only after a rigorous public participation process. Many commenters stated that unrestricted release should be the goal, but that realistically, some sites cannot be remediated suitably for unrestricted release.

*Response.* The proposed rule provides for both unrestricted release and restricted termination of the license under prescribed conditions. The requirement that the licensee convene a Site-Specific Advisory Board early in the development of proposed decommissioning plans should help ensure substantive public participation in decisions concerning possible restricted termination of the license. As previously discussed, the staff is aware of sites, such as sites with significant volumes of thorium contamination, that will require extensively remedial efforts to achieve the proposed requirements for restricted or unrestricted release. If these sites cannot be remediated to achieve at least the restricted release criteria, then the site license will remain in effect indefinitely until technology or resources become available to achieve compliance with the criteria. In the interim period, NRC will ensure appropriate control of the licensed site on a site-specific basis, including access restrictions, environmental monitoring, personnel monitoring, posting, mitigative actions, and other measures directed at ensuring the stability of the radioactive material and protection of the public health and the environment.

13. Waste Disposal

*Comment.* Several commenters questioned whether there is enough space at a regional disposal facility for the voluminous soils and other materials that are expected from

decommissioned sites. Other commenters stated that irrespective of where or how wastes are disposed, the costs of nuclear waste management will be high. Some commenters suggested that the option of leaving radioactive wastes on-site should be considered as a temporary or intermediate option to permit decay of radioactive wastes and allow time for resolving long-term waste disposal problems.

*Response.* The NRC staff recognizes that decommissioning to radiation levels approaching background may produce large volumes of low-level waste which could affect the availability of regional disposal capacity. However, the proposed rule would require the licensee to consider significant radiation doses and risks resulting from transportation and disposal of radioactive wastes generated in the decommissioning process when determining ALARA for a specific decommissioning action. If disposal capacity were to become temporarily limited, on-site storage and containment of wastes may be necessary until a disposal site becomes available. However, any temporary onsite storage and containment of radioactive wastes be done under the provisions of an existing NRC license, and the site would not be decommissioned until this waste had been removed from the site. The radiological and non-radiological impacts associated with disposal of the types of radioactive waste generated in decommissioning were considered in NRC's development of the Environmental Impact Statement in support of the low-level waste disposal requirements in 10 CFR Part 61. Impacts associated with extended storage of waste onsite or at a centralized storage facility would typically be considered as part of environmental analysis in support of issuing or renewing facility licenses or of approving decommissioning actions at a licensed facility.

14. Minimizing Generation of Waste

*Comment.* Many commenters recommended that the NRC discourage or stop licensing nuclear operations that generate nuclear wastes. Several commenters stated that environmental organizations would be willing to talk about ways to decommission nuclear operations and to dispose of radioactive materials only if power plants were no longer permitted to operate. Other commenters supported the continuation of nuclear power. One commenter urged the NRC not to take sides for or against nuclear power and stated that the policy debate on the relative merits of various power-generating options should be held in another forum (e.g., Congress). Some commenters observed that high costs of decommissioning and waste disposal could help to minimize waste generation. Some commenters recommended that the rulemaking should deal with source reduction of nuclear wastes. Some commenters suggested that decommissioning proposals should be submitted and approved at the design stage and, consequently, newer facilities should be easier to decommission.

*Response.* The NRC agrees that newly licensed facilities should be encouraged in designing and operating nuclear facilities to minimize the generation of radioactive waste and facility contamination. The proposed rule would require applicants for licenses, other than renewals, after the effective date of the rule to describe in the application how facility design and procedures for operation will minimize contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of radioactive waste.

15. Radon

*Comment.* Many commenters recommended that the NRC should impose limits to control exposure from radon emissions at decommissioned sites because radon exposures could be a significant health problem. Commenters in favor of NRC setting a radon standard stated it should be possible to make a good estimate of how much radon comes from licensed material. Commenters not supporting the NRC's setting a radon standard stated that the need to deal with radon at licensed sites should be considered site-to-site and that radon control should be left to local zoning boards and housing authorities.

*Response.* The NRC staff believes that it is not possible to measure or distinguish concentrations of radon which will produce radiation doses of a few mrem TEDE/y above background using current technology. This belief is based on:

(1) Recognition of the ubiquitous nature of radon in the general environment;

(2) Large uncertainties in the models used to project radon concentrations in indoor air based on soil concentrations of precursors; and

(3) Limitations of existing measurement techniques in distinguishing between elevated radon concentrations and radon attributed to natural sources. Therefore, the staff does not propose to establish a separate standard for radon. Instead, exposure to radon at decommissioned sites would be controlled by requiring the licensee to reduce the residual concentrations of radon precursors like uranium, thorium, and radium to levels within the limit for unrestricted use and, using the ALARA principle, toward levels which are indistinguishable from background levels.

16. Environmental and Social Considerations

*Comment.* Many commenters recommended that the NRC develop standards for protecting natural ecosystems in addition to standards protecting humans. Others expressed concern for environmental protection without recommending for or against establishing separate environmental standards. A large number of commenters recommended that protection of human health is sufficient to protect any known ecological system. Therefore, only a standard for protecting humans is needed. Commenters stated that this is the view of the International Commission on Radiological Protection.

Many commenters recommended that case-by-case consideration should be given for special environmental and social/cultural issues associated with homeland, historical sites, and Native American lands because they contain religious sites and sacred areas.

Several commenters cautioned against establishment of unnecessarily restrictive decommissioning standards that could cause severe environmental damage trying to clean up soil and vegetation to background levels because these actions could totally change a site's ecology.

*Response.* The NRC considered the possible need for radiation standards specifically designed to protect the environment. This analysis is reflected in the draft GEIS. Based on this analysis, the staff concludes that the radiological criteria in the proposed rule which are designed to protect public health should also provide adequate environmental protection.

However, the NRC staff recognizes there may be environmental or cultural issues associated with a particular decommissioning action which require special consideration. These issues can best be handled on a site-by-site basis as part on the decommissioning plan review process and as part of the Commission's environmental review under the National Environmental Policy Act (NEPA). Where necessary, opportunity for public comment and use of the Site-Specific Advisory Board will provide a mechanism for local citizens and other affected parties to be directly involved in addressing these issues.

17. Recycle

*Comment.* Comments were offered for and against whether NRC should permit recycling of contaminated materials. Those in favor recommended recycling to save resources. Those opposed recommended against recycling to limit public risk. Other commenters stated that the International Atomic Energy Agency (IAEA) has recommended that the maximum dose to any individual from recycled material not exceed one millirem per year.

*Response.* Although the proposed rule does not specifically address recycle, the NRC staff believes the radiological criteria in the proposed rule provide reasonable assurance that future inadvertent recycle of soils or structures following decommissioning of a site will not adversely affect public health. The analysis which supports the rule, although it does not specifically take recycle into account, is based on prudently conservative scenarios which tend to overestimate expected public doses.

In cases where the licensee achieves residual radioactivity levels that are indistinguishable from background, the potential doses from inadvertent recycle are expected to be insignificant. In cases where the residual radioactivity cannot be reduced to the point that it is indistinguishable from background, the licensee will have to consider inadvertent recycle when conducting the ALARA analysis for the site. Therefore, steps can be taken on a site-specific basis to impose additional restrictions if inadvertent recycle appears to pose a significant potential problem at that site.

The Commission plans to consider separately the issues of how to deal with cases where the licensee proposes to release material containing residual radioactivity intentionally for reuse or recycle either as a part of decommissioning or ongoing operations. In the interim the Commission will continue to be review these actions on a case-by-case basis.

**Comments on the NRC Staff Draft**

*Overview of Comments*

There were 1685 comments from the 89 docketed letters received on the NRC staff draft. These comments were similar to those from the workshops with respect to the wide range of expressed views. Two subjects on which the commenters were in general agreement were (1) the appropriateness of the rulemaking process, and (2) the significance of not having the GEIS and the guidance documents available for review. The commenters strongly favor the enhanced participatory rulemaking process but said that the GEIS and the guidance documents are needed in order to understand the basis for the rule and how it would be implemented. The NRC staff considered these comments in the development of the proposed rule.

*Summary and Discussion of Comments*

1. Need for and Scope of Rule

*Comment.* Commenters supported the NRC's efforts to develop radiological decommissioning standards. However, some questioned whether the NRC should defer to the EPA and suggested that the NRC await the EPA's efforts to develop these standards. Several commenters urged that the NRC reconsider and delete the exclusion of previously approved decommissioning plans from the new requirements. Others recommended retention of this exclusion and its expansion to cover decommissioning plans already in the final stages of NRC review and approval. A comment reported often was that the NRC should issue its proposed radiological criteria for final public review and comment only after the NRC has completed and issued the companion GEIS and other guidance documents needed to facilitate understanding of the proposed rulemaking.

*Response.* With respect to the question of whether the NRC should let the EPA take the lead in developing radiological decommissioning standards, the NRC will have to proceed with rulemaking in any case. If EPA develops standards, the NRC will have to promulgate a regulation to implement the EPA standard. Therefore, it was jointly decided that parallel NRC/EPA efforts would be the best approach. The NRC has worked closely with the EPA and will continue to do so. As a result of this interactive cooperation, progress has been made that would have been unlikely otherwise. It is believed important that both agencies continue to work on this effort (see discussion under Item 4, Consistency and Compatibility). With respect to previously approved decommissioning plans, the Commission believes it is important to encourage licensees to take timely decommissioning actions. Accordingly, the Commission is retaining the exclusion of previously approved decommissioning plans in the new requirements and is expanding the provisions to include plans under final stages of NRC review. Regarding the need for public review of the GEIS and other guidance documents, the Commission fully agrees. The GEIS, a regulatory analysis (RA), and an NRC staff working draft regulatory guide will be issued concurrently with publication of the proposed rulemaking. The formal comment period for the rulemaking will commence with this **Federal Register** Notice. Further opportunity for enhanced public participation and comment will be provided in a workshop to be held during the latter part of the formal comment period for the proposed rule and the NRC staff draft regulatory guide. Notification of the workshop will be placed in the **Federal Register** and posted on the electronic board.

2. Radiological Criteria

*Comment.* Comments were divided concerning whether NRC decommissioning standards should be based on the recommendations of recognized national and international bodies such as the ICRP and NCRP. Many citizen/environmental organizations continued to recommend that the NRC should require decontaminating to a level indistinguishable from background. They opposed setting any acceptable risk level or radiation dose for decommissioning because they believe that any incremental increase over background dose is unacceptable. Most industry and other commenters recommended that the decommissioning standard be based on technically supportable risk/dose criteria. Some commenters urged that the proposed level be decided only after analyzing the costs and benefits of alternative proposals.

Many commenters objected to inclusion of a quantitative goal in the rulemaking because it could be interpreted by some as the standard that should be achieved in most cases. Other commenters agreed on inclusion of both a quantitative goal and a quantitative limit. Some want these to be lower than the levels specified—TEDEs of 3 mrem and 15 mrem per year. Many citizen/environmental organization commenters stated that, instead of specifying a numerical goal and a limit, the regulatory objective should be to reduce contamination to a level that is not distinguishable from background. Other commenters stated that doses in the range of 3 mrem to 15 mrem per year are indistinguishable from background. Most of these commenters recommended that the dose limit should be increased to a level between 25 and 100 mrem per year, or possibly higher. Reasons for recommending a higher dose limit included (1) the criteria should conform to recommendations of national and international scientific

consensus organizations; (2) a cost-benefit analysis would support a higher limit; (3) the criteria should be based on scientific analyses and not based on intuitive feelings; (4) there are no practical means to demonstrate compliance with TEDEs of 3 and 15 mrem per year; and (5) efforts to comply with such levels would waste large resources in remediating small risks with no real gain in benefits.

Several commenters recommended that the goal be dropped from the rule. Some of these commenters suggested the goal instead be incorporated into the guidance that would accompany the rule. A principal concern was that the goal would become a de facto limit. In particular, the EPA, in presenting their comments on the goal, indicated concern over the perception that the specification of any value, such as 3 mrem/yr, would be construed as the actual requirement for the decommissioning. The EPA has verbally continued to express concerns regarding the NRC staff proposal of presenting acceptable staff positions for ALARA documentation in the Regulatory Guide.

Some commenters requested that, because of possible failure of institutional controls, the NRC should not place a dose restriction of 100 mrem per year on sites subject to restricted release. Commenters were divided on the requirement that licensees base their estimates of greatest TEDE dose on the first 1000 years. Some stated that this time is unrealistically long while others stated that it is unrealistically short.

Several commenters compared the proposed limits of 15 mrem/y and 3 mrem/y to risk limits/goals attributed to the EPA and suggested that these comparisons are complicated by differences in scenarios for exposure used by the EPA and the NRC, and by a basic difference between a limit and a goal. A limit must always be reached. A goal is not always reached.

Commenters requested that the NRC include alternative radiological criteria for licensees who possess radioactive materials of a kind and form not requiring extensive decontamination at the time of decommissioning. They suggested that demonstration of compliance should be possible through direct radiation measurements and not require the use of modeling and consultants.

*Response.* The following responses are provided.

a. Appropriateness of 15 mrem/y TEDE.

The Commission has considered the comments in light of information presented in the Generic Environmental Impact Statement (GEIS) and the Regulatory Analysis (RA). These studies show that residual radioactivity can be reduced to levels which will result in an annual TEDE of 15 mrem without unreasonable effort or expense for most radionuclides and most facilities. A summary of this analysis can be found in Sections 5 through 7 of the GEIS and Sections 4 and 6 of the RA. In those few cases where reducing the residual radioactivity to the levels required to comply with the 15 mrem/y TEDE limit for unrestricted use are either not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm, § 20.1405 of the proposed rule provides the licensee with the option of requesting release of the site with restrictions placed on its use.

Several commenters have argued that a 15 mrem/y limit for unrestricted release is not consistent with the recommendations of the ICRP and NCRP and that the limit should be raised to as high as 100 mrem/y. The Commission believes that an additional margin of safety below 100 mrem/yr is necessary because the 100 mrem/y limit is intended to apply to doses to the public resulting from *all* radiation sources (NCRP Report No. 116, Section 15; ICRP Publication 60, Section 5.5). Therefore, allocation of the entire 100 mrem/y dose to residual radioactivity from the decommissioning of a single facility would be inappropriate. Using a safety margin to limit the dose from a single source to avoid a summation of exposures approaching the dose limit is consistent with the recommendations of both the ICRP and the NCRP.

b. Removal of Goal from the NRC staff Draft Rule.

As formulated in the NRC staff draft rule, the goal was designed to serve two principal objectives. First, and foremost, it would clearly articulate the NRC's objective for decommissioned sites. Second, it would establish a dose level well below the limit at which licensees who have little or no site contamination (e.g., licensees that use only sealed sources or short lived radioisotopes) would be relieved of much of the burden of analysis associated with the ALARA requirement.

The NRC staff has reexamined the goal concept based on the comments received, and has concluded that having both a limit and a goal in the rule can lead to confusion concerning the Commission's intent. Therefore, in order to clarify the Commission's intent and to make it clear that 15 mrem/y TEDE is the only limit, the Commission has dropped the term "goal" from the rule. Instead the Commission has substituted the following:

First, in order to clearly articulate the Commission's continued commitment to the objective for decommissioned sites, the following statement of objective has been included in § 20.1402 of the proposed rule:

> The objective of decommissioning is to reduce the residual radioactivity in structures, materials, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that radionuclide. The Commission realizes that, as a practical matter, it would be extremely difficult to demonstrate that such an objective has been met. Therefore, the Commission has established a site release limit and is requiring that licensees demonstrate that the residual radioactivity at a site is as far below this limit as reasonably achievable.

Second, in order to provide administrative relief to licensees who have little or no site contamination, the Commission has revised § 20.1404 of the rule to read as follows:

A site will be considered acceptable for unrestricted use if:

(a) the residual radioactivity that is distinguishable from background radiation results in a TEDE to the average member of the critical group that does not exceed 15 mrem (0.15 mSv) per year; and

(b) the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA).

Depending on the site-specific ALARA analysis, any dose level less than or equal to 15 mrem/y may be considered ALARA. However, in many situations, licensees who have little or no site contamination should be able to readily achieve a dose level well below the limit. The NRC will provide guidance as to how such licensees can demonstrate compliance with Section 20.1404(b) without having to perform sophisticated analyses to demonstrate that residual radioactivity levels at their sites are ALARA. This should substantially reduce the administrative burden on licensees who have little or no site contamination (e.g., licensees that use only sealed sources or short lived radioisotopes). There are approximately 17,000 NRC and Agreement State licensees, many of which are small businesses, that are expected to benefit from this guidance without any compromise to public health and safety.

c. Time Frame.

For the reasons stated in the rationale for the proposed rule, the Commission believes the 1000 year time frame proposed by the NRC staff is reasonable for estimating annual doses from

residual radioactivity from decommissioned sites.

When predicting thousands of years into the future, uncertainties become very large because of major potential changes in the hydrogeologic regime at the site over these long periods of time. When the potential consequences of exposure to the radioactive source are great; e.g., as in the case of a high level waste repository, distant future calculations may provide some insight concerning the relative magnitude of consequences. However, the consequences of exposure to residual radioactivity at levels near background are small and considering the large uncertainties, long term modeling of near background doses may be virtually meaningless. Thus, the Commission does not believe it would serve any useful purpose to attempt to estimate radiation doses from residual radioactivity thousands of years into the future.

3. Individual vs Collective Doses

*Comment.* Several commenters stated that collective dose should be used by the NRC to evaluate costs and benefits of alternative radiological criteria. The Department of Energy suggested that an ALARA analysis, based on collective dose and competing risks for certain sites with low population exposure, might indicate that the criteria proposed by the NRC may not be justifiable. Most commenters favored using dose to individuals to ensure protection of the public health. Many citizen/environmental groups disagreed with the proposal to limit individual dose to the "average member of the Critical Group." They recommended that the goal and limit as described in the staff's draft rule be applied to the maximally exposed individual in the exposure group.

*Response.* The Commission agrees with the commenters that collective dose should be used by the NRC to evaluate the costs and benefits of alternative radiological criteria. In fact, this has been incorporated in the assessment of the total risk for the respective alternatives in the GEIS and the RA. Although these documents were unavailable for review by the commenters, the technical analyses in the GEIS and the RA support the criteria in the proposed rule.

The Commission considers the use of TEDE to the average member of the Critical Group to be a more useful concept for the purposes of decommissioning for the reasons discussed in the Rationale for the Proposed Rule. The discussion of "Critical Group" in the Rationale has been revised to make it clear that the critical group must be reasonably homogeneous. This clarifies that the licensee cannot average doses over a group whose members may be expected to get widely differing doses for the purpose of "averaging down" expected doses to highly exposed individuals.

4. Consistency and Compatibility

*Comment.* As was the case at the earlier workshops, commenters urged that the NRC and the EPA work together to develop consistent standards. Conservation of Federal resources and avoidance of imposing different standards on regulated parties were considered to be important. However, the NRC was advised not to lower its risk limit simply to accommodate the EPA.

The commenters recommended that the degree of consistency that the NRC will require between NRC standards and Agreement State standards be clearly stated. One commenter suggested that the Federal standard be set to ensure adequate protection of the public and that if a State or local community requires a licensee to decommission to a lower standard that does not provide a significant benefit, then the State or local community should fund this extra effort. Agreement State commenters requested that the statement of considerations for the proposed rulemaking discuss the extent to which they must implement specific provisions of the rule to maintain continued regulatory compatibility with NRC regulations.

*Response.* In response to the comments concerning the relationship between NRC and EPA standards, NRC and EPA are developing decommissioning criteria in parallel rulemaking efforts. The NRC and EPA are coordinating their efforts in this area to ensure that effective and consistent site decommissioning standards are established, while minimizing duplication of effort. Accordingly, the EPA was an important participant in the NRC rulemaking workshops and is a cooperating agency in the preparation of the GEIS for the rulemaking. The NRC has also consulted extensively with EPA throughout the rulemaking process. The objective is that EPA will be able to make a finding that NRC decommissioning criteria provide adequate protection for the public and the environment and will exclude NRC licensees from the EPA cleanup standards.

In response to the question of NRC/Agreement State compatibility, the Commission is developing a new policy on Agreement State compatibility which will be issued for public comment in the near future. Because the compatibility determination for this proposed rule will be considered in light of the new compatibility policy, the Commission believes it would be premature to propose a compatibility determination at this time. However, to facilitate ultimate resolution of the compatibility determination for this rule, if adopted as a final rule, the Commission is requesting comments on whether, to what extent, and under what circumstances, an Agreement State should be authorized to establish more stringent requirements than those set forth in this proposed rule.

5. Finality

*Comment.* Finality of decommissioning was a major issue among commenters. Various commenters stated (1) that revisiting sites should be based on new site-specific information and not on new evaluation methods and (2) that the criteria for revisiting sites are too subjective and require clarification or refinement.

*Response.* The Commission agrees that the wording in the NRC staff draft was ambiguous. Therefore, § 20.1401(c) has been revised to make it clear that the Commission would require additional cleanup only if, based on new information, it determined that residual radioactivity remaining at the site could result in significant public risk.

6. Community Involvement

*Comment.* The NRC staff draft specified that the Commission will inform the public of each receipt of a decommissioning plan from a licensee and of each proposal for restricted release of a site. In addition, it specified that licensees who propose to release sites under stipulated conditions of restricted release must convene a Site-Specific Advisory Board (SSAB) for purpose of providing advice to the licensee.

Several industry commenters questioned the need for these additional requirements on the grounds that:

(1) Present procedures for public participation in licensing procedures are adequate and provide an appropriate way to deal with the concerns of those affected by decommissioning;

(2) There is no demonstrated need; and

(3) The provisions of SSABs would put managerial, regulatory, and financial matters of licensees in the hands of people who have no responsibility for the consequences of their recommendations.

Most other commenters supported the proposed new community involvement proposals and some commenters additionally urged the NRC to require establishment of an SSAB for all decommissioning cases, including sites suitable for unrestricted release. Others recommended that an SSAB should be used in cases involving Native American lands, sites surrounded by high density residential uses, ocean or waterfront sites, or sensitive ecosystems unless the three (3) millirem per year decommissioning goal would be met.

Additional comments on the use of SSABs included:

(1) The rulemaking should delimit SSAB roles and responsibilities;

(2) Guidelines are needed with respect to SSAB staffing and activities;

(3) SSABs should not report to licensees or be funded by licensees because this could compromise their effective use;

(4) Membership should be restricted to "citizen, environmental, environmental justice, and other public interest groups" who reside in the local community; and

(5) The membership should include a representative of the site to which wastes are expected to be sent.

*Response.* With respect to the need for additional community involvement, the Commission believes that the noticing requirements and the requirements to establish and use SSABs should be implemented as proposed in the NRC staff draft. The proposed termination of licenses and release of sites under conditions of restricted release involve issues (e.g., land restrictions) which could have unanticipated adverse effects on the local community. The Commission wants to be sure it has considered the views of affected members of the local community on these issues before making a decision on the licensee's request. These proposed provisions will provide an effective means to inform the affected licensees, local and state governments, and the NRC of these views. However, the Commission believes that an extension of the SSAB requirement to apply to cases involving unrestricted release is unnecessary and would impose an undue burden with little or no public benefit on a large number of licensees, many of which are small businesses.

With respect to delimiting the role and responsibilities of SSABs and providing guidance on SSAB staffing and activities, the Commission specifically requests further comment on these issues. After gaining experience with the formation and use of SSABs, it might be appropriate to reconsider the need for this guidance at a later date. Regarding the funding and control of SSABs, the Commission believes that licensees should provide the necessary funding as proposed. The proposed rule contains safeguards to ensure that the SSABs are not subject to licensee control. The licensee would be required to provide reasonable opportunity for all local affected parties to be represented on the SSAB. Meetings of the SSAB must be open to the public. The licensee must provide adequate public notice of the location, time, date, and agenda for the meetings at least two weeks in advance of each meeting. All records generated or reviewed by the SSAB become part of the licensing docket and will be available for public inspection.

With respect to restriction of the SSAB membership to the local community, the intent of the provisions in § 20.1407(c) is such a restriction. Regarding the proposal to expand memberships of the SSAB to include a representative of the designated offsite disposal site, the Commission believes that the offsite disposal site is not relevant for consideration by the SSAB, because siting of the waste disposal facility involves a separate public process that, in part, recognizes that wastes will be transported to the waste facility.

7. Stability and Flexibility

*Comment.* Most of those who commented on stability or flexibility provided in the draft rule said that a generic standard should be written to provide enough flexibility to account for actual risks associated with conditions peculiar to specific sites in protecting the public and the environment, and to select appropriate site-specific remediation methods. Some commenters said that the imposition of strict generic standards without flexibility might not provide an optimum protection strategy across the range of categories of licensees. Other commenters noted that the adequacy of flexibility provided under the draft proposed rule cannot be decided without the necessary guidance documents.

*Response.* The Commission also recognizes the need for flexibility in applying these criteria because of constraints posed by site-specific conditions (e.g., geology, hydrology, meteorology, and radiation background levels) and to provide opportunity for meaningful participation by local communities in individual decommissioning actions. Therefore, the proposed rule provides for site-specific implementation of the generic criteria. The Commission is publishing the NRC staff's working draft regulatory guidance along with the proposed rule which describes methods for site-specific implementation of the criteria. This working draft guidance includes conduct of site characterization and surveys, specific radionuclide concentration and surface activities that would be considered by the NRC staff to meet the 15 mrem/y TEDE limit, and modeling acceptable to the staff to develop more site-specific values of concentration or surface activity based upon the factors unique to the activity being decommissioned.

8. ALARA Considerations

*Comment.* Comments on the ALARA concept were much the same as provided at the earlier workshops. Most public/environmental organization commenters stated that they do not trust licensees to make ALARA determinations. Industry and other commenters stated that they support the NRC's permitting them to make ALARA determinations and urged the NRC to continue to permit licensees to use site specific factors in making these determinations.

*Response.* The Commission believes that ALARA is a fundamental concept of radiation protection and is an important part of its decommissioning criteria. NRC guidance being issued in support of the rulemaking provides for the use of site-specific factors in deciding what levels should be achieved below the stipulated radiological limit. This guidance will be described in NUREG–1500 "Working Draft Regulatory Guide on Release Criteria for Decommissioning; Staff Draft for Comment."

9. Demonstrating Compliance

*Comment.* Many submitting written comments urged the NRC to complete its guidance on acceptable methodologies criteria as soon as possible and to publish this guidance for comment before the rulemaking is issued for final public comment. Many commenters questioned the technical ability to demonstrate compliance with the proposed dose goals or limits in the staff's draft, or questioned the technical justification for such requirements, or said that there are no standards for demonstrations of compliance. Several others said that demonstrating compliance to the proposed dose goals or limits is impractical and will unnecessarily increase costs and volumes of low-level wastes generated during decommissioning.

Many commenters said that there must be practical or objective guidance for demonstrating compliance. Some

said that this guidance should be issued for review before the rule is promulgated. Some commenters raised questions on who makes the final decisions on demonstrating of compliance and by what means.

Some commenters suggested that simplified guidance (not requiring the use of modeling or consultants) should be provided for designated licensees who have only low levels of contamination or "uncomplicated situations" in their operations. Some commenters said that the public might more easily understand demonstration of compliance if alternative limits to the ones proposed were used. Several commenters said that compliance should be demonstrated by actual measurements and not just by modeling. Some commenters also suggested specific methodologies for demonstrating compliance.

*Response.* The capabilities for demonstrating compliance are considered in the GEIS and the RA which provide the technical basis for the radiological criteria in the rule. Guidance that is being issued for public comment in conjunction with the publication of the proposed rule will cover acceptable methods for demonstrating compliance, the use of simplified methods or practical derived measurements and measurements units, and verification by practical measurement techniques not necessarily requiring modeling.

In response to the question concerning who makes the final decisions on whether the licensee has demonstrated compliance with the rule, the NRC or, as appropriate, the Agreement State will make this determination. Where necessary the NRC or Agreement State will conduct independent confirmatory surveys to ensure that the appropriate criteria have been met.

10. Sites That Cannot Be Released for Unrestricted Use

*Comment.* Many public/environmental organization commenters stated that licensees should not be permitted to walk away from a contaminated site and that contamination should be removed to the extent that radioactive materials and radiation are indistinguishable from background. Many voiced opposition to any release of sites under restricted use conditions. This opposition was based largely on concern about the long term effectiveness of institutional controls to ensure compliance with the conditions for restricted release.

Other commenters generally endorsed both the unrestricted and restricted release of sites. With respect to restricted release of sites, commenters:

(1) Stated that the NRC should better define the circumstances which could qualify a site for restricted release;

(2) Recommended that the NRC give examples of acceptable institutional controls for providing reasonable assurance that specified dose limits are not exceeded; and

(3) Requested that the NRC publish guidance on determination of necessary financial assurance for proper control and maintenance of a site.

Some commenters recommended that the NRC adopt a dose level below 100 mrem per year as the upper dose limit in the event of failure of the applied institutional controls. Still other commenters stated that the 100 mrem per year restriction could foreclose onsite disposal of wastes as presently permitted at uranium mill tailings sites and that this restriction should be deleted. Several commenters requested that the NRC better address the issue of consolidation and long-term care of wastes at sites not suitable for restricted release.

One commenter said that engineered disposal cells might be the best solution for sites with large quantities of slightly contaminated soils, while another said that large volumes of slightly contaminated soil with a few "hot spots" should be regarded as homogeneously contaminated.

*Response.* The NRC believes that the rule should provide for both unrestricted release and for restricted release of sites. Additionally, there may be sites that will have to continue under license. The NRC is issuing guidance, first in draft form for comment, on how it expects to implement the provision for restricted release.

The 100 mrem/y restriction is designed to establish an upper bound on the risk in the unlikely event of failure of institutional controls or restrictions at the site. This restriction is also designed to ensure that license termination under restricted conditions does not result in a proliferation of *de facto* disposal sites. The Commission believes that 100 mrem/y is an adequately conservative upper bound. This dose corresponds to the maximum annual dose during the first 1000 years following decommissioning. In many cases, the peak dose occurs during the first year following decommissioning. For these cases, the predicted dose levels will be reduced by radioactive decay so that if institutional controls or restrictions at the site were to fail some time in the future the actual public dose would be substantially below 100 mrem/y in most cases. In cases where buildup of radioactive daughter products or other conditions cause the peak dose to fall other than in the first year after decommissioning, the predicted dose levels are significantly below 100 mrem/y for the large majority of the first 1000 years after decommissioning.

The issue of an appropriate value for the dose in the unlikely event of failure of institutional controls has been a key point of the ongoing discussions between the EPA and the NRC. As noted in section entitled "Rationale for the Proposed Rule" of this Statement of Considerations, the Commission is specifically soliciting comment on the appropriateness of this value, and the impacts associated with the selection of other values such as 75 mrem/yr.

Disposal of tailings and soil cleanup at milling sites is regulated under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The impact of the dose limit on unique practices at uranium mill tailings sites may require case-by-case consideration in the interest of consistency with current regulation of tailings under UMTRCA.

11. Waste Disposal

*Comment.* A commenter stated that waste disposal issues must be discussed in the EIS. Some commenters stated that the criteria do not seem to recognize and should more adequately consider the non-linear increase in waste volumes at low concentrations of radioactive materials.

Several commenters stated that the NRC should consider allowing for some decommissioning under restricted conditions with on-site emplacement, storage, and monitoring of radioactive wastes. Several commenters stated that previously-buried wastes should be cleaned up at the time of decommissioning consistent with the generic cleanup standard. Several others disagreed, saying that it is "unfair" or unnecessary to include these previously-buried wastes.

Agreement State commenters were concerned over the adequacy of the space at regional disposal facilities for the large amount of material to be generated from the decommissioned sites. The concern was enforced by the lack of a GEIS to review and assertion that data used in the EIS for 10 CFR Part 61 is over 10 years old.

*Response.* Waste disposal issues, including matters of the relationships between waste volumes and cleanup levels, are discussed in the GEIS. The Commission maintains its position that public and environmental risk is an overriding factor that requires the consideration of the removal of

previously-buried wastes as a part of decommissioning. Even though a previous burial was carried out within the regulatory requirements at an operating site, the potential differences in conditions between the site as operated and as decommissioned require such consideration. The requirements for previously-buried wastes are consistent with the Commission's established regulatory practice for decommissioning under the Site Decommissioning Management Plan (SDMP). The proposed rule requires an analysis of site-specific overall risks, costs, and benefits in deciding, for individual sites, whether or not the exhumation and removal of previously-buried wastes is required.

12. Minimizing Generation of Waste

*Comment.* The NRC staff draft contained a section on minimization of contamination. Most commenters supported the concept of minimization of contamination, but several industry commenters preferred not to include the proposed provisions in the rulemaking on radiological criteria for decommissioning. Industry commenters stated that these concepts do not need to be put in regulations because waste minimization and hence, minimization of contamination, is commonplace in the nuclear industry and is driven by such economic incentives as reduction of disposal costs. Some commenters recommended that the NRC publish guidelines for public comment on the actions that licensees are expected to take in minimizing the production or release of contamination, and that the NRC should similarly publish for public comment the criteria it will use to determine if licensee proposals are acceptable.

*Response.* The Commission agrees that existing ALARA programs and the cost of radioactive waste disposal provide sufficient incentive to minimize radioactive waste. Therefore, requiring licensees to redesign existing facilities or amend already approved radiation protection procedures is unnecessary and would not result in any substantial improvement in public safety. Therefore, § 20.1408 (b) and (c) have been deleted from the proposed rule. However, the Commission believes that there may be substantial potential to reduce contamination, facilitate eventual decommissioning, and minimize generation of radioactive waste if special consideration is given to these issues when designing new facilities. Therefore, § 20.1408(a) has been retained.

13. Radon

*Comment.* Those submitting written comments mostly agreed with not establishing a separate standard for radon. Commenters noted, however, that sites contaminated with radon-bearing-or-producing materials may have great difficulty meeting the proposed dose goal and limit in the staff's draft.

*Response.* The Commission believes that a separate standard for radon is not needed and that NRC guidance being issued in support of the rulemaking will provide licensees with sufficient information concerning measurement problems that are associated with background radon. Additional comments are invited with respect to the problem of determining compliance with the NRC's radiological criteria at sites contaminated with processed radon-bearing-or-producing materials.

14. Recycle

*Comment.* One commenter said that all "radioactivity" from licensed use should be contained and not recycled. Another said that recycling should be considered on a case-by-case basis.

*Response.* The Commission believes the radiological criteria for recycling is outside the intended scope of this rule but will be addressed in a future rule. In the interim, the Commission will continue to review this action on a case-by-case basis.

15. Comments Related to Definitions

*Comment.* There were a number of questions concerning definition of terms used in the draft rule. There were also several suggestions for additions, deletions, or revisions to existing definitions in the draft rule, and there were some suggested new definitions. Questions were raised concerning the use of terms such as, "affected parties," "significant," "average member," "cumulative TEDE," "decommissioning goal," "unrestricted use," and "net public or environmental harm."

Some commenters objected to including fallout in the definition of background radiation. Others agreed with the proposed definition or proposed various additions, revisions, or deletions to the definition, e.g., to change the wording starting with the current words "global fallout" to "global fallout from the testing of nuclear explosive devices or from past nuclear accidents."

Several commenters said that the term "residual radioactivity" needs clarification with respect to materials discharged from the site in accordance with other provisions of the regulations in 10 CFR Part 20.

*Response.* The practical implication of these terms and others in the proposed rule have been clarified in the guidance which accompanies the proposed rule.

With regard to "background radiation," the new definition is the same as the existing definition except for the addition of the words "or from past nuclear accidents like Chernobyl which contribute to background radiation and are not under the control of the licensee" after "explosive devices" in order to explicitly recognize that radioactivity from past nuclear accidents contributes to background radiation. Because the remaining wording has been adequate in the past, the Commission sees no reason to further revise the definition at this time.

The Commission agrees that the proposed definition of "residual radioactivity" in § 20.1003 was not clear with respect to materials discharged at the site in accordance with other provisions of 10 CFR Part 20. The definition has been revised to clarify the Commission's intent.

**Rationale for the Proposed Rule**

*Conceptual Basis*

The overall conceptual basis for decommissioning, as proposed in this rulemaking, consists of an objective to reduce the residual radioactivity at the site so that it is indistinguishable from the background, a limit on the dose considered acceptable for release of a site with a stipulation that dose be as far below this limit as reasonably achievable (i.e., ALARA), provisions in regulatory guidance for administrative relief from performing sophisticated ALARA analyses for licensees who have little or no site contamination, provisions for restricted termination of a license when physical remediation activities cannot achieve the limit, and enhanced provisions for public participation.

The limit for release of a site is 15 mrem/y (0.15 mSv/y) TEDE for residual radioactivity distinguishable from background. If doses from residual radioactivity are less than 15 mrem/y TEDE, the Commission will terminate the license and authorize release of the site for unrestricted use following the licensee's demonstration that the residual radioactivity at the site is ALARA.

The Commission expects the licensee to make every reasonable effort to reduce residual radioactivity to levels that will allow unrestricted release of the site. However, the Commission will consider terminating a license in cases where restrictions must be imposed on

the use of the site to ensure that public doses are maintained below the 15 mrem/y (0.15 mSv/y) TEDE limit, provided the licensee:

(1) Can demonstrate that further reductions in residual radioactivity necessary to comply with the 15 mrem/y TEDE limit for unrestricted use are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(2) Has made adequate provisions for institutional controls to reduce annual TEDE from residual radioactivity distinguishable from background to the average member of the appropriate critical group to 15 mrem (0.15 mSv) TEDE;

(3) Has provided sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(4) Has reduced the residual radioactivity at the site so that the TEDE from residual radioactivity would not exceed 100 mrem (1 mSv) per year even if the restrictions applied in the termination were no longer effective in limiting the possible scenarios or pathways of exposure.

The Commission estimates that there may be several existing licensed sites (no more than a few tens) containing large quantities of materials contaminated with low level radioactivity where health and environment may best be protected by onsite stabilization and disposal. The contamination was generated over the last several decades using practices that generally would not be found satisfactory today without adequate plans and financial assurance for decommissioning. In some cases, a responsible public or private entity may no longer exist or be viable for discharging its responsibility for ensuring protection of the public and the environment. In other cases, the contamination may have been generated through research or development contracts with the Federal government or given special consideration in Federal law. Due to the unique characteristics of these sites when compared with the much larger population of licensed nuclear facilities, the Commission contemplates that the owners and operators of these facilities may seek exemptions from the decommissioning criteria under the general provisions in 10 CFR 20.2301.

Such sites, and the considerations associated with them, are not unlike disposal sites for uranium mill tailings, and may need to be provided with equivalent types of controls to ensure sufficient protection. At a minimum, the Commission would require that the public health and environmental protection requirements developed for these unique cases be consistent with other appropriate regulatory requirements for disposal of radioactive waste, including those in 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste", or 10 CFR Part 40, Appendix A "Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for their Source Material Content."

Any Commission decision on such exemption requests and the disposition of these sites would be made on the basis of a comprehensive analysis of the risks and benefits of all viable alternatives including remediation of the site to meet the criteria in this rule. Proper disposition of these sites may require some type of durable institutional control, such as placing the site under the custody of a State or Federal agency, to ensure long-term protection of the public and environment. For example, for a former licensed site in West Virginia, the final disposition included action by Congress that provided for transfer of the site to Federal custody and ongoing DOE oversight. Such an analysis would have to consider all significant risks to humans and the environment resulting from the decommissioning process (including transportation and disposal of radioactive wastes generated in the process) and from residual radioactivity remaining at the site following termination of the license. The Commission specifically solicits comments on this approach to the handling of these unique cases, including proposals for alternative strategies which could be used to assure adequate protection of public health and the environment.

The Commission envisions that the scope of the exemption request would be limited to the radiological criteria for unrestricted or restricted release. Due to the unique nature of these sites and the comprehensive evaluation necessary to support such an exemption request, the Commission would require that a meaningful and substantial process be used by the licensee or the NRC itself for informing and involving the public in the decision. Consequently, the Commission would not favorably entertain exemption requests unless they were developed through a process consistent with the public involvement processes required in this rule.

For any process conducted by the NRC, the Commission would solicit participation from: the Environmental Protection Agency; local and State governments; persons residing in the vicinity of the site; citizen, environmental, environmental justice, and other public interest groups; Indian Nation or other indigenous people that have treaty or statutory rights that could be affected; and other affected parties. For example, in reviewing proposed decommissioning actions at two licensed sites in Ohio and New Jersey, the Commission has initiated development of Environmental Impact Statements (EISs) for both sites and recently held public meetings on the scope of the EISs with the intent to fully explore the alternatives and potential impacts associated with the disposal of the contaminated material. As a part of this process, NRC is working closely with EPA, State, local representatives, and members of the public to develop acceptable alternatives. The site-specific process applied at these sites by the NRC is attempting to include participation by all affected parties to assure continued protection of public health and safety through a viable and effective decommissioning approach.

Although the Commission recognizes there may be existing sites where public health and the environment may best be protected by onsite stabilization and disposal, the Commission does not believe that future activities should result in additional sites that would not be able to meet the criteria in this rule. Therefore, the Commission is proposing to add a new § 20.1408 to its regulations which would require that applicants for licenses, other than renewals, describe in the application how facility design and procedures for operation will minimize contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of radioactive waste.

*Definitions*

The following definitions already present in the regulations would be revised:

The definition of Background Radiation (10 CFR 20.1003) would be revised so that fallout from past nuclear accidents like Chernobyl which contribute to background radiation and are not under the control of the licensee are included in the definition. The Commission does not believe it is reasonable for licensees to be required to remediate material over which they have no control and which is present at comparable levels in the environment both on and off of the site.

The definition of Decommission would be revised to also provide for termination of a license and release of property under restricted conditions. This revision was requested by a large number of commenters at the workshops on decommissioning. Those commenters felt that the NRC should recognize that it may not be feasible to decontaminate some sites to a level appropriate for unrestricted use and that restrictions on the subsequent use of such sites could be used to provide an additional measure of public protection.

The following new definitions would be added:

The Critical Group would be defined as the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity given the circumstances under which the analysis would be carried out. For example, if the site were to be released for unrestricted use the Critical Group would be the group of individuals reasonably expected to be the most highly exposed considering all reasonable potential future uses of the site. This would include renovation of structures, water use, and industrial, residential, and agricultural uses of the land and structures. If the site were to be released with restrictions, the licensee would have to assess both the dose to the average member of the group of individuals reasonably expected to be the most highly exposed assuming that the proposed restrictions were successfully imposed and adhered to (the "Critical Group" appropriate to this set of circumstances) and the dose to the average member of the group of individuals reasonably expected to be the most highly exposed if the proposed restrictions were to fail (in essence the "Critical Group" for unrestricted termination of the license).

The Critical Group, for purposes of screening dose calculations, is defined for each scenario described in NUREG/CR–5512, Volume 1. In each scenario, the Critical Group is an individual or relatively homogeneous group of individuals expected to receive the highest exposure within the assumptions of the particular scenario. The average member of the Critical Group is that individual who is assumed to represent the most likely exposure situation based on prudently conservative exposure assumptions and parameter values within the model calculations. For example, the Critical Group for the building occupancy scenario is the group of workers occupying a building that has been decontaminated. The average member of that group is assumed to spend 2000 hours per year working in the building and is exposed to residual contamination via the external, inhalation, and inadvertent ingestion pathways. A more detailed discussion of acceptable methods for selecting the critical group and estimating the dose to the average member of the group can be found in Section III.G. of the draft regulatory guide.

This is a departure from the requirement in § 20.1302 where, for licensed activities, the licensee is required to assess the dose to "the individual likely to receive the highest dose." However, in contrast to licensed facilities where public doses normally result from activities that are carefully prescribed and controlled, the public doses from residual radioactivity at decommissioned sites may result from a variety of activities for which the maximally exposed individual is much more difficult to precisely define. Furthermore, in ongoing operations licensed by the Commission, it is possible to update or keep track of who might be likely to receive the highest exposure. In decommissioning, there will be no ongoing mechanism that would allow for adjustments of imposition of additional controls. Therefore, the Commission believes it is more prudent to use the average member of the critical group for assessing TEDE from residual radioactivity after the license is terminated because this provides a reasonably conservative estimate of public risk without attempting to speculate on which specific individual may be expected to receive the highest dose.

The practice of defining and using a Critical Group when assessing individual public dose from low levels of radioactivity similar to those expected from a decommissioned site is proposed in Section 5.5.1 of the 1990 recommendations of the International Commission on Radiological Protection (ICRP 60) and has been adopted in the current draft of the Environmental Protection Agency (EPA) Draft Federal Radiation Protection Guidance for Exposure of the General Public. For the purpose of this Subpart, the licensee would be required to estimate the dose to the average member of the critical group from residual radioactivity remaining at the site.

Indistinguishable from background would mean that the detectable concentration of the radionuclide is not statistically different from the background concentration of that radionuclide in the vicinity of the site, or in the case of structures, in similar materials using adequate measurement technology, survey methodology, and statistical techniques.

Readily removable would refer to residual radioactivity, as defined below, which is removable using non-destructive, common, housekeeping techniques (e.g., washing with detergent and water) that do not generate large volumes of radioactive waste requiring subsequent disposal. This would not include techniques that produce chemical wastes that are expected to adversely affect public health or the environment. Readily removable would also not refer to residual contamination dispersed in soil under conditions where removal of the residual radioactivity could only be accomplished by moving large volumes of soil.

Residual Radioactivity would include radioactivity in structures, materials, soils, groundwater, and other media at the site resulting from licensed activities at the site. This would include radioactivity from all licensed and unlicensed sources used by the licensee but would exclude background radiation. This term should not be confused with the term "residual radioactive material" which appears in 10 CFR 40.4.

Site-Specific Advisory Board (SSAB) would be a committee constituted by the licensee to provide advice to the licensee on decommissioning.

*Scope*

The proposed rule would apply to the decommissioning of all facilities licensed by the Commission except for facilities or portions thereof (e.g., waste disposal sites and uranium mill tailings) that are already specifically covered in the regulations. It provides for both unrestricted and restricted release of sites. The proposed rule would not apply to sites already covered by a Commission approved decommissioning plan if the plan was approved before the effective date of the rule. This provision is designed to encourage licensees to continue with ongoing and planned decommissioning.

After a site has been decommissioned and the license terminated in accordance with the criteria in this proposed rule, the Commission would require additional cleanup only if, based on new information, it determines that residual radioactivity remaining at the site could result in significant public or environmental harm.

The Commission recognizes there may be existing sites containing large quantities of materials contaminated with low level radioactivity where public health and the environment may best be protected by onsite stabilization

and disposal with proper restriction of the site to prevent human disruption of the site and exposure to the radioactive contamination. There are precedents for these cases in the stabilization of uranium mill tailings under the Uranium Mill Tailings Remediation Control Act of 1978 (UMTRCA) and the DOE Formerly Utilized Sites Remedial Action Program (FUSRAP). In these cases, some type of durable institutional control, such as placing the site under the custody of a State or Federal agency, may be necessary to ensure long-term protection of the public and the environment. However, consideration of these actions would require extensive site-specific safety and environmental analyses. In addition, input from affected parties in the vicinity of the site would be desirable to determine whether there are other local impacts that must be considered in determining the best course of action and to ensure the long-term effectiveness of the institutional controls. For these reasons, the Commission has determined that these actions fall outside the scope of this rulemaking in the sense that there may be site-specific determinations using criteria other than those proposed in this rulemaking. If, in the future, general criteria to evaluate these actions can be developed, the Commission will consider additional rulemaking to establish the criteria for general application.

The proposed rule would also require that all new applicants for licenses, other than renewals, describe in the application how facility design and procedures for operation will minimize contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of radioactive waste.

*Radiological Criteria*

The proposed rule would establish a dose limit for release of a decommissioned site of 15 millirem per year (mrem/y) TEDE for residual radioactivity distinguishable from background. The 15 mrem/y TEDE dose limit was selected to provide both a substantial margin of safety below the NRC's dose limit for members of the public and an appropriate limit for the acceptability of release of a facility which would no longer be subject to regulatory control.

The estimated lifetime risk associated with an annual TEDE of 15 mrem/y is approximately 4E–4. This estimate was arrived at by using a risk coefficient of 4E–4 per rem and assuming an exposure lifetime of 70 years. The 4E–4 risk factor is roughly equivalent to the 3.92E–4 risk factor in Table 6.6 of the EPA NESHAPS Background Information Document (EPA89). Use of this value is consistent with the calculational methods of the Environmental Protection Agency which is also promulgating regulations in this area. The 70-year exposure lifetime provides a conservative estimate of lifetime exposure. The Environmental Protection Agency is using a 30-year lifetime exposure in estimating lifetime risk from residual radioactivity at decommissioned sites. This is based on the assumption that it is unlikely that an individual will continue to live or work in the same area for more than 30 years. Using a 30-year exposure lifetime the estimated lifetime risk associated with an annual TEDE of 15 mrem/y would be approximately 2E–4. A more detailed discussion of estimating lifetime risk can be found in appendix B of the GEIS.

In selecting this limit, the NRC staff took into account recommendations of the ICRP and NCRP and those criteria promulgated by EPA and NRC which provide acceptance criteria for areas where unrestricted access in the vicinity of facilities is permitted, such as generally applicable environmental standards established by EPA and the criteria used for remediation of contaminated sites under the Superfund (CERCLA) program. The dose value of 15 mrem/y TEDE is generally consistent with the risks implied by those criteria and with the remediations which have been achieved.

Several commenters have argued that a 15 mrem/y limit for unrestricted release is not consistent with the recommendations of the ICRP and NCRP and that the limit should be raised to as high as 100 mrem/y. The Commission believes that an additional margin of safety below 100 mrem/yr is necessary because the 100 mrem/y limit is intended to apply to doses to the public resulting from *all* radiation sources (NCRP Report No. 116, Section 15; ICRP Publication 60, Section 5.5). Therefore, allocation of the entire 100 mrem/y dose to residual radioactivity from the decommissioning of a single facility would be inappropriate. Using a safety margin to limit the dose from a single source to avoid a summation of exposures approaching the dose limit is consistent with the recommendations of both the ICRP and the NCRP.

In addition, the cost/benefit impact analysis in the GEIS (Chapters 5 and 6 and Figures 7–1 through 7–11) indicate that costs of achieving a 15 mrem/yr limit would not be unduly burdensome on licensees. In those few cases where remediation to achieve 15 mrem/yr may present an unreasonable burden, release of the site with restrictions placed on its use provides an alternative means for achieving this level of protection.

The proposed rule would also require that the licensee reduce any residual radioactivity to as close to indistinguishable from background as reasonably achievable. ALARA considerations are to include all significant risks to humans and the environment resulting from the decommissioning process, and licensees are to demonstrate why further reductions below the limit are not reasonably achievable. Depending on the site-specific ALARA analysis, any dose level less than or equal to 15 mrem/y may be considered ALARA.

However, in many situations, licensees who have little or no site contamination should be able to readily achieve a dose level well below the limit. The NRC will provide guidance as to how such licensees can demonstrate compliance with § 20.1404(a)(ii) without having to perform sophisticated analyses to demonstrate that residual radioactivity levels at their sites are ALARA. This should substantially reduce the administrative burden on licensees who have little or no site contamination (e.g., licensees that use only sealed sources or short lived radioisotopes). There are approximately 17,000 NRC and Agreement State licensees, many of which are small businesses, that are expected to benefit from this guidance without any compromise to public health and safety.

The Commission recognizes that demonstrating that radionuclide levels at a site are indistinguishable from background is a complex task involving sophisticated sampling, measuring, and statistical analysis techniques. The difficulty of the task can vary substantially depending on a number of factors including the radionuclide in question, the background level for that and other radionuclides at the site, and the temporal and spatial variations in background radiation at the site. Therefore, in order to assist the licensee in making these determinations, the Commission will publish specific guidance on acceptable methods which can be used by the licensee to demonstrate that the concentrations of specific isotopes at the site are indistinguishable from background. The Commission will also publish guidance on acceptable methods for estimating annual TEDE to the average member of the Critical Group. This guidance will include a discussion of the type of scenarios and exposure pathways which should be considered, and computer models for estimating the annual TEDE to the average member of the critical group. The computer models will be

screening models that employ generically derived conservative assumptions and factors. However, licensees will be able to substitute assumptions and factors more appropriate to a particular site if they can demonstrate that these factors and assumptions reasonably reflect the existing and projected conditions at the site. Licensees may also use other models or methods for estimating TEDE, provided they can demonstrate to the Commission that these models or methods provide reasonable estimates for the site to be decommissioned. This guidance is described in NUREG–1500 "Working Draft Regulatory Guide on Release Criteria for Decommissioning; Staff Draft for Comment." The Commission requests comment on the appropriateness of the approach and the methodology described in NUREG–1500.

As can be seen from Figures 7–1 through 7–11 of the GEIS, it appears reasonable to expect that a number of licensees will be able to remediate their sites to dose levels below the 15 mrem/yr limit at reasonable cost. However, these same analyses indicate that in most cases there are large incremental costs associated with reductions below 3 mrem/yr, and that the incremental costs are due primarily to the cost of demonstrating compliance rather than the cost of additional remediation. Therefore, when attempting to achieve doses below 3 mrem/y, costs can increase substantially with little or no additional reduction in risk to public health or the environment. Section 7–5 of the GEIS also indicates that levels of residual radioactivity which produces a dose of 3 mrem/yr are generally difficult to distinguish from natural background because they are comparable to local variations in background radiation and substantially smaller than national variations in background radiation. As a result, the staff draft regulatory guide (NUREG–1500) proposes that, in order to minimize the burden of documentation and analysis in such cases, the Commission would consider documentation that the TEDE to the average member of the critical group from all radionuclides distinguishable from background does not exceed 3 mrem/y as sufficient for demonstrating compliance with the ALARA requirement. The Commission invites comment on this provision in the guide.

The proposed rule would broaden the definition of decommissioning to include release for restricted use in addition to release for unrestricted use. The underlying approach for restricted release is that the risk for a member of the public should be limited to acceptable levels, irrespective of whether that individual is exposed during the conduct of some occupation or in residential or recreational activities. Thus, the conditions for restricted release are premised on restricting the use of the site so that average individual doses do not exceed the 15 mrem/yr dose limit. While the circumstances of the exposure (i.e., the duration or pathway) may thus be varied, the underlying risk limit remains respected for any critical group of individuals.

Licensees unable to meet the requirements for unrestricted use would be allowed to request permission to release sites for restricted use with subsequent termination of the license if they can demonstrate that the following conditions have been met:

(1) Further reductions in residual radioactivity are not technically achievable, the cost of achieving further reductions would be prohibitively expensive, or further reductions would directly produce environmental or public harm that is clearly excessive compared to the health or environmental benefits achieved through these reductions now or in the future.

The Commission has proposed this provision as the fundamental basis for determining when a restricted termination of a license will be appropriate. Technical achievability, prohibitive expenses, and excessive environmental or public harm are the three areas in which the Commission believes that alternative considerations should be examined as part of the overall process of determining the most appropriate action for a site. Clearly, if remediation is simply not possible given the technological capabilities in existence at the time of decommissioning, some other types of alternatives must be appropriate.

In terms of excessive costs, the Commission recognizes that there may be situations where removal and disposal of large quantities of material is simply not reasonable from a cost standpoint. An example of this type of situation that has already been addressed is the disposal of mill tailings, where a separate set of standards has been developed, including provisions for institutional control. The third condition, excessive environmental or public harm, has been included in recognition that although remediations may be technically possible and within the overall resources of society, the net damage, through removal and disposal of materials, alteration of ecosystems, or displacement of populations, could be too great to not be undertaken. Considerations of this nature are best determined through public participation, which is provided through provisions for a Site-Specific Advisory Board.

The third condition also provides for the possibility that the net environmental impact of completely remediating a site and then constructing an entirely new site to perform a similar activity may be inappropriate. An example of this could be the continued use of a site for electrical power generation, where a number of existing facilities, such as the turbine and electrical distribution system could be used with a different energy source. This approach would need to be examined on a case-by-case basis, and a determination made regarding the appropriateness of remediating the site for unrestricted use vs some type of restricted use in order to conserve environmental resources.

(2) There are adequate provisions for institutional and/or other passive controls to provide reasonable assurance that the TEDE from residual radioactivity to the average member of the critical group will not exceed 15 mrem (0.15 mSv) per year. Institutional controls would have to be enforceable by a responsible Government entity or in a court of law in response to suits by affected parties.

This provision specifies the fundamental dose limit for considerations of restricted termination. The core requirement is that an individual should not be exposed to a greater level of risk than that established for unrestricted use releases. Thus, the application of restrictions must be able to reduce the average dose to the appropriate critical group to the same 15 mrem/year value used as the limit for unrestricted use. However, in the restricted use situation, the critical group will be different from the critical group that would need to be considered in the unrestricted situation. For example, a restriction might be imposed that would prevent residential applications or agricultural uses of the facility. These restrictions would mean that critical group would have different exposure characteristics (e.g., 8 hours per day while working in a building) and thus, a larger quantity of radioactivity could be allowed to remain onsite for the same dose.

(3) There is sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms will include:

(i) Prepayment as described § 30.35(f)(1);

(ii) Surety method, insurance, or other guarantee method as described in § 30.35(f)(2); or

(iii) Statement of intent in the case of Federal, State, or local government licensees, as described in § 30.35(f)(4).

This provision has been included to assure that mechanisms have been established as necessary to ensure the continued effectiveness of the controls that may be used to meet the dose limit. The ongoing effectiveness of the restrictions will not necessarily be the responsibility of the former licensee but could be vested in other organizations, local governments, etc., which would continue cognizance of the action. This responsibility could include periodic monitoring, overviews of site access restrictions, or other activities that might be necessary to support the proposed controls. Under this provision, the amount of financial assurance that would be needed will be determined on a site-specific basis, taking into account the proposed restrictions, and the recommendations of the Site-Specific Advisory Board.

(4) Residual radioactivity at the site has been reduced so that if the site were released for unrestricted use, the TEDE from residual radioactivity to the average member of the critical group is as low as reasonably achievable and would not reasonably be expected to exceed 100 mrem (1 mSv) per year. This limit coincides with the NRC dose limit for public exposure in 10 CFR Part 20.

This final condition is premised on the assumption that circumstances could develop under which the restrictions, such as land use or deed restrictions, might no longer be effective in limiting the exposure scenarios. If, for example, a restriction against residential or agricultural use were no longer effective in preventing those uses of the land, then the assumptions about the exposure of the critical group would no longer be valid. While this is not assumed to occur for planning purposes, the Commission believes it is appropriate to have a "safety net" to prevent exposures in excess of the public dose limits.

The development of this provision also has the effect of requiring that some remediation be conducted at the site, rather than simply allowing a licensee to develop a series of restrictions. The Commission believes it appropriate that basic measures be taken to reduce the risk and dose that could result from a site and that the public dose limits form the minimum acceptable level of protection that should be provided in the unlikely event that restrictions are not effective in reducing the magnitude and scenarios of exposure.

The Commission specifically solicits public comment on the adequacy of the 100 mrem (1 mSv) per year value as the "safety net" to prevent exposures in excess of the public dose limits in the event that all site restrictions fail. The recommendations of the ICRP and NCRP, as well as Draft Federal Guidance being developed by the EPA, suggest constraining the dose to members of the public from any single source to less than 100 mrem/y as a way to ensure that the total public dose from all sources does not exceed 100 mrem/y. The Commission has followed this principle in establishing the dose limit for decommissioning. However, in the case of the "safety net", the Commission does not believe that fractionation would be necessary for the following reasons:

(1) The 100 mrem/y cap, although being equivalent to the dose limit for members of the public, represents a small fraction of the 500 mrem/y dose that the Draft Federal Guidance suggests is acceptable for members of the public in unusual circumstances. The Commission believes that failure of all site restrictions at decommissioned sites is a highly unlikely event.

(2) The 100 mrem/y value applies to the peak dose during the first 1000 years. For most radioisotopes, this peak dose occurs in the first year and diminishes over time due to radioactive decay. This decay provides an additional margin of safety which is equivalent to an *a priori* fractionation of the limit.

(3) The 100 mrem/y value is less than the value selected for controlling intruder scenarios for other types of facilities where some type on institutional control (e.g. government ownership) is contemplated.

However, the Commission is soliciting suggestions for alternatives to the proposed safety net, including the use of some fraction of 100 mrem/y (e.g., 75 mrem/y) as the safety net. The Commission is particularly interested in the relative merits of selecting a fraction of the routine public dose limit in light of the required conservatism in the calculation of the dose, and the rationale for selecting some particular fraction. The Commission is also soliciting comments on the relative benefits and impacts of the Commission's proposed safety net and proposed options, including comments on the number of facilities that could be impacted by selection of alternative values.

The Commission recognizes there may be unusual circumstances in which the licensee may wish to seek an exemption from one or more of the provisions of this subpart. For example, the licensee may feel it is unnecessary to clean up a site to the requirements for unrestricted release because the site is contained within a larger area where use will be restricted for the foreseeable future. The Commission believes these rare circumstances can adequately be handled under existing provisions in § 20.2301 which provides opportunity for the licensee to request an exemption from any of the provisions of 10 CFR Part 20.

The Commission also recognizes there may be special environmental or cultural issues associated with a particular decommissioning action which would require more stringent implementation of the requirements in this subpart. For example, there may be social or cultural issues that have to be considered because the site is on or contiguous to historical sites or Native American lands which contain religious or sacred areas. However, the Commission believes these issues can best be handled on a site-by-site basis as part of the licensing process and, in most cases, would be taken into consideration when establishing ALARA residual radioactivity levels for a site. The Commission does not believe that further reductions in dose would be necessary to meet social or cultural issues if the limit for unrestricted use is achieved and ALARA has been applied. Where necessary, the provisions for public comment and for a Site-Specific Advisory Board will provide a mechanism for local citizens and other affected parties to be directly involved in addressing these issues.

**Public Participation in the Decommissioning Process**

The Commission believes it is important for the public to not only be fully informed of the decommissioning actions at a particular site but also to be able to effectively participate in site decommissioning decisions. The proposed rule will provide for public participation in the decommissioning process through three mechanisms in addition to the relevant NRC requirements regarding hearing opportunities for a particular site.

Upon the receipt of a decommissioning plan from the licensee, or a proposal by the licensee for restricted release of a site pursuant to § 20.1405, or whenever the Commission deems such notice to be in the public interest, the Commission shall:

(1) Notify and solicit comments from local and State governments in the

vicinity of the site and Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning;

(2) Publish a notice in the **Federal Register** as well as in other media, such as local newspapers, which are readily accessible to individuals in the vicinity of the site; and

(3) Solicit public comment on the proposed decommissioning action.

These provisions are designed to provide affected individuals and organizations with both information about the proposed decommissioning and an opportunity to provide comments on the licensee's proposal. The Commission believes it is particularly important to provide notice in a forum that is accessible to local individuals. This forum may vary from site to site but would usually include providing notice to local media for publication.

For decommissioning where the licensee does not propose to meet the conditions for unrestricted release, the proposed rule would require that the licensee convene a Site-Specific Advisory Board (SSAB) as described in § 20.1407 for the purpose of obtaining advice from affected parties regarding the proposed decommissioning. The purpose of the SSAB would be to provide recommendations to the licensee on:

(1) Whether there are ways to reduce residual radioactivity to a level necessary to comply with the provisions of § 20.1404 which are technically achievable, would not be prohibitively expensive, and would not result in net public or environmental harm;

(2) Whether provisions for institutional controls proposed by the licensee will:

(a) Provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 15 mrem (0.15 mSv) TEDE per year;

(b) Be enforceable; and

(c) Impose undue burdens on the local community or other affected parties.

(3) Whether the licensee has provided sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site.

The areas in which the SSAB would be expected to provide recommendations parallel the areas that a licensee must address as part of its proposal for a restricted termination of license. The intent of the provision is to provide a mechanism for early public involvement in the development of the decommissioning plan for the site. To the extent that local public involvement may be vital to the successful implementation of land use restrictions, involvement of representatives of local government, affected citizens, Native Americans, and other interested parties in the Site-Specific Advisory Board is important to the long-term effectiveness of the decommissioning action. In order for the participation to be most effective, it should come during the development of the plan, rather than as comment after the licensee has spent significant resources to develop its proposal. Hence, the recommendations of the SSAB are to be included in the decommissioning plan along with the licensee's disposition of those recommendations. It is important to note that the opportunity for comment provisions would still be applicable even when a SSAB had been used in the development of the decommissioning plan.

**Site-Specific Advisory Board**

The SSAB has been patterned after the recommendations contained in the Interim Report of the Federal Facilities Environmental Restoration Dialog Committee (FFERDC) entitled "Recommendations For Improving the Federal Facilities Environmental Restoration Decision-Making and Priority Setting Processes, February 1993," which is a consensus document developed by over 40 members of a committee chartered by the U. S. Environmental Protection Agency (EPA). The diverse members of the FFERDC represented Federal, Tribal, State, environmental, labor, and citizen interests. It is designed to respond to the desire expressed by many workshop commenters that local affected parties have early and substantive input into the decommissioning process on a site-specific basis. The SSAB would supplement and not supplant existing NRC procedures that provide for public input into the regulatory process. The Commission believes that increasing the opportunity for early public involvement in the decommissioning process is an effective way to provide an information exchange and to ensure credible and defensible licensing decisions, especially when the long-term effectiveness of the land use restrictions may depend on community knowledge and involvement in their development and application. The Commission would emphasize that the operation of the SSAB is not intended to usurp the traditional land use authority of the local or State government. In fact, many of the institutional controls that may be recommended by an SSAB to ensure the restricted use of a site will depend on the exercise of this traditional authority by the local or State government.

Licensee notification to the Commission of intent to decommission in accordance with §§ 30.36(b), 40.42(b), 50.82(a), 70.38(b) or 72.54 would have to specify whether the licensee intends to reduce residual radioactivity at the site to levels which would allow the site to be released for unrestricted use. If not, the licensee would be required to submit a plan for establishing and supporting an SSAB with the notification.

The licensee would be responsible for establishing the SSAB and developing appropriate ground rules and operating procedures for the SSAB with the advice of the SSAB. The SSAB would consist of about 10 members plus an ex officio representative from the Commission. This number of members is expected to allow for adequate representation of affected parties without allowing the group to become so large that it cannot perform its function effectively. The licensee would be required to provide adequate administrative support for SSAB activities and provide the SSAB access to studies and analyses pertinent to the proposed decommissioning.

Membership of the SSAB, to the extent that representatives are willing to participate, would have to:

(1) Reflect the fullest practical range of interests in the affected community and region and be composed primarily of individuals who could be directly affected by residual radioactivity at the decommissioned site, and

(2) Include representatives from the licensee; local and State governments; workers; persons residing in the vicinity of the site; citizen, environmental, environmental justice, and public interest groups; and Indian Nation or other indigenous people that have treaty of statutory rights that could be affected.

Meetings of the SSAB would be open to the public. The licensee would be required to provide adequate public notice of the location, time, date, and agenda for the meetings at least 2 weeks in advance of each meeting. All records generated or reviewed by the SSAB would become part of the decommissioning docket, and would be available for public inspection.

In most cases it is expected that the work of the SSAB would be completed after it had formally submitted its advice to the licensee. However, there may be some cases (e.g., where the licensee's plan is substantially altered following NRC review) in which the SSAB may have a continuing role in

providing advice to the licensee. In any case, it is anticipated that the SSAB would be dissolved after the license has been terminated.

The Commission is seeking comment on whether there are situations where it might be inappropriate or infeasible to establish an SSAB under conditions set forth in § 20.1406(b). For example, are there situations where establishment of an SSAB would be inconsistent with other governmental regulations and statutes, or are there circumstances in which local government officials may not be allowed to participate in privately funded advisory groups. If so, what alternatives would be available to satisfy the objectives of public participation and input? Should criteria be incorporated in the regulation for granting exemptions to the requirements of § 20.1406(b) for good cause. If so, what criteria might be appropriate?

The Commission is also seeking comment on what the content of descriptive information on membership, size, operating procedures, administrative support, and distribution of agendas should include, and whether this information should be included in the rule or in a regulatory guide or other document.

**General Provisions**

*Readily Removable Residual Radioactivity*

It is clear that some structures can easily be decontaminated to levels well below those necessary to reduce individual doses from residual radioactivity at a decommissioned site to a few mrem TEDE/y above background. Past decommissioning practice has been based on the premise that "the licensee should make a reasonable effort to eliminate residual radioactivity." See Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," June 1974, pg. 3. Some previously released structures have been decontaminated to levels below those specified in Regulatory Guide 1.86 for some nuclides. Therefore, the Commission proposes to require that all readily removable residual radioactivity be removed from a site before it is decommissioned. This is considered a necessary and reasonable step toward ensuring that doses to the public from residual radioactivity are ALARA. For the purpose of this proposed regulation, the Commission has defined readily removable to mean removable using non-destructive, common, housekeeping techniques (e.g., washing with moderate amounts of detergent and water) that do not generate large volumes of radioactive waste requiring subsequent disposal. This would not include techniques that produce chemical wastes that are expected to adversely affect public health or the environment. It would also not include removal and transport of soil except when small discreet areas of contamination can be removed by digging up a few shovelfuls of soil.

The intent of these proposed provisions is to define the basic types of remediation that should be undertaken as a matter of good practice regardless of whether the site meets the NRC residual radioactivity criteria. However, it is not the Commission's intent to require more substantive remediation without the benefit of careful planning and ALARA considerations. The Commission specifically solicits comments on how to best define the activities that should be included under this provision.

*Radioactive Materials Previously Disposed of at the Site*

Under NRC regulations, licensees may dispose of radioactive wastes on their own property. Before 1981, NRC regulations (10 CFR 20.304) allowed disposal without prior approval of limited quantities of specified nuclides under prescribed conditions. On July 28, 1981, § 20.304 was revoked because the Commission did not have sufficient assurance that these disposals would be adequately protective. However, onsite disposal can still be undertaken by individual licensees under 10 CFR 20.2002 (previously § 20.302), provided the disposal is specifically approved by the NRC or an Agreement State. If this buried radioactive material is considered to be part of the licensee's total site inventory for decommissioning purposes, some licensees will likely be required to remove all or part of this material before decommissioning the site. This position may be controversial because it can be argued that materials already disposed of in accordance with existing NRC requirements should no longer be considered part of the licensees inventory of radioactive material. Nevertheless, removal of the previous burials may be necessary to achieve the proposed radiological criteria and ensure sufficient protection of the public and environment.

In this proposed rulemaking, the Commission takes the position that public and environmental risk is the overriding factor. Therefore all residual radioactivity at the site, including that previously disposed of in accordance with NRC requirements in §§ 20.304, 20.302, and 20.2002 must be included in determining whether the licensee meets the radiological criteria in the proposed rule. However, the Commission is aware that the balancing of risks, costs, and benefits may be substantially different for exhuming buried material than they would be for decontamination of surface soils and structures. Therefore, it is expected that before any decision is made to exhume radioactive material previously disposed of at a site, the licensee will perform a site-specific analysis of the overall risks, costs, and benefits of this action.

This position is consistent with positions already taken by the NRC on this issue. In the Supplementary Information to the Final Rule "General Requirements for Decommissioning Nuclear Facilities" (published on June 27, 1988, 53 FR 24021), the Commission states it will "take a hard look at the extent to which the site has been used to dispose of low level radioactive wastes by land burial, and will decide what remedial measures including removal of such wastes offsite, are appropriate before the site can be released for unrestricted use." In the Site Decommissioning Management Plan (SDMP) the NRC staff notes that "disposals performed under 10 CFR 20.304 have at several sites required exhumation during the decommissioning and takes the position that acceptability of these burials will be assessed in future decommissioning procedures." See SECY–91–096, Enclosure 1 "Site Decommissioning Management Program, Revision 1 (January 1991)" p. 16. See also, the draft Regulatory Guide on "Standard Format and Content for Decommissioning Plans for Nuclear Reactors," which states that the licensee's plan should indicate the extent of waste burial onsite and the remedial measures appropriate before the site can be released for unrestricted use.

*Use of Actual Measurements*

Although the Commission recognizes that it will be necessary in many cases for the licensee to use modeling to estimate the TEDE to the average member of the critical group from residual radioactivity at the site, the proposed rule would require that estimates of the site specific source term (i.e., residual radioactivity remaining at the site) be substantiated using actual measurements to the maximum extent practical. The reason for this substantiation of estimates is that using actual measurements reduces the uncertainty associated with the estimates and provides a greater measure of assurance that radiological requirements are being met. It is

expected that substantiation would be carried out in accordance with the survey requirements in 10 CFR 20.1501. Information and guidance related to surveys and use of measurement techniques have been published in draft form for public comment as NUREG/CR–5849. An NRC staff working draft regulatory guide is being published with this proposed rulemaking which specifically addresses these topics. The Commission plans to publish further guidance in draft form before the effective date of the final rule.

*Time Frame*

There is some difference of opinion on how far into the future calculations should be carried out for the purpose of establishing acceptable residual radioactivity levels for decommissioned sites. Current NRC staff practice is to calculate projected doses out to 1,000 years in the future in evaluating radiological impacts associated with residual radioactivity. This is consistent with current DOE practice. See, Order DOE 5400.5 "Radiation Protection of the Public and Environment." EPA's high level waste regulations require that cumulative releases to the environment be calculated out to 10,000 years. See, 40 CFR part 191 (Note: 40 CFR part 191 was remanded by the U.S. Court of Appeals for the First Circuit in July 1987, and is being reconsidered by EPA.) However, there are some who think such calculations should be carried out to provide estimates of potential contamination of groundwater for tens or even hundreds of thousands of years into the future.

When predicting thousands of years into the future, uncertainties become very large because of major potential changes in the hydrogeologic regime at the site over these long periods of time. When the potential consequences of exposure to the radioactive source are great; e.g., as in the case of a high-level waste repository, distant future calculations may provide some insight concerning the relative magnitude of consequences. However, the consequences of exposure to residual radioactivity at levels near background are small, and considering the large uncertainties, long term modeling of near background doses may be virtually meaningless. In light of this, the Commission does not believe it would serve any useful purpose to attempt to estimate radiation doses from residual radioactivity thousands of years into the future.

Although theoretical maximum doses for a few isotopic decay chains do not occur for hundreds or thousands of years, for most radionuclides of interest in decommissioning the peak dose occurs in less than 1,000 years. Therefore, the Commission proposes to require that TEDE estimates be based on the greatest annual dose expected within the first 1000 years after decommissioning. This annual dose must be interpreted as the TEDE delivered in that year, including the committed dose equivalent from radionuclides taken into the body during that year. The Commission notes that a time frame of 1,000 years is also being considered by the EPA, as indicated in the draft regulatory language, discussed during the NACEPT Meeting in May 1994.

*Risk Considerations in ALARA Calculations*

A number of commenters at the workshops on decommissioning stated that all risks should be taken into account when setting requirements for decommissioning a site. A principal concern was that the Commission, in an attempt to reduce residual radioactivity levels at a site, would establish cleanup requirements which could result in an overall risk increase, or in risk transference, rather than risk reduction. For example, in an attempt to clean up a site for decommissioning, the licensee may increase risk to persons along transportation routes and at the site where the material is finally disposed by transporting large volumes of debris from the site. In addition, disposal of large quantities of low-level radioactive debris at licensed low-level waste disposal sites could deplete the capacity of existing sites and ultimately result in a proliferation of licensed disposal sites for low-level radioactive waste.

The Commission, recognizing the validity of these concerns, proposes to require that the licensee, when determining ALARA, consider all significant radiation doses and risks resulting from residual radioactivity and the decommissioning process itself, including transportation and disposal of radioactive wastes generated in the process. This analysis would be part of the decommissioning plan and would be available for comment by interested parties under the public participation provisions described earlier in this notice.

In order to ensure compatibility with EPA groundwater standards, the proposed rule requires licensees to remediate their sites so there is a reasonable expectation that residual radioactivity from the site will not cause the level of radioactivity in any groundwater that is a current or potential source of drinking water to exceed the limits specified in 40 CFR Part 141 as they exist on the effective date of this regulation.

*Groundwater Protection*

Section 20.1404(d) of the proposed rule would require that licensees demonstrate a reasonable expectation that residual radioactivity from a decommissioned site will not cause the level of radioactivity in any groundwater that is a current or potential source of drinking water to exceed the limits specified in 40 CFR Part 141. This provision is in addition to the overall radiological criterion for unrestricted release in 10 CFR 20.1404(a)(i) that the residual radioactivity that is distinguishable from background radiation results in a TEDE to the average member of the critical group that does not exceed 15 mrem (0.15 mSv) per year.

The Commission is soliciting comments on the proposed groundwater protection requirement. In particular, the Commission solicits comments on the following:

1. Is a separate standard needed for groundwater when the overall radiological criterion of 15 mrem applies to all pathways,

2. Given that natural background is included in 40 CFR 141, and given that for pathways of exposure covered by this rule, background is excluded, what alternatives exist for reconciling this difference in approach?

3. Is it appropriate to apply a drinking water standard ("at the tap") to groundwater in all cases.

**Minimization of Contamination**

Many commenters at the workshops on decommissioning expressed the opinion that the Commission should be placing more emphasis on ensuring that licensed facilities are designed and operated in a way that would minimize the amount of radioactive contamination generated at the site during its operating lifetime. The Commission is sympathetic with this view. Therefore, the Commission proposes to require that applicants for licenses, except for renewals, describe in their applications how facility design and procedures for operation will minimize contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of radioactive waste. This provision is a prospective requirement for new licensees to examine contamination and waste minimization early in the process of facility design and license approval.

The Commission considers that under existing regulations it is reasonable to expect new licensees, other than

renewals, to provide for ease of decommissioning and minimization of waste when designing and operating facilities. However, given past experience, the Commission believes that this new requirement is necessary to focus applicant's attention on the type of facility design and good housekeeping practices needed to minimize the types of problems the Commission has had to face with problem sites like those addressed in the Commission's Site Decommissioning Management Plan (NUREG–1444, October 1993).

**Timeliness**

The Commission does not want to create a situation where time requirements for completing decommissioning would make it difficult or impossible for licensees to safely and properly remediate large, complex, or otherwise difficult to decommission facilities. Therefore, the Commission is requesting comments on whether the criteria contained in this proposed rule can be met within the time frames that were specified in the final rule on "Timeliness in Decommissioning of Materials Facilities."

In particular, the Commission is soliciting comments on whether licensees that anticipate having to establish an SSAB should be exempted from the generic timeliness requirements. If so, what alternative provisions could be made to assure timely decommissioning of the site? For example, could licensees be required to provide site-specific decommissioning schedules during the earliest stages of decommissioning, or during preparation for decommissioning, e.g., in the decommissioning plan.

**Relationship Between the Generic Environmental Impact Statement and Site-Specific Decommissioning Actions**

The Generic Environmental Impact Statement prepared by the Commission on this rulemaking evaluates the environmental impacts associated with the remediation of several types of NRC-licensed facilities to residual radioactivity levels ranging from 100 mrem/yr TEDE down to 0 mrem TEDE (background). The Commission believes that the generic analysis will encompass the impacts that will occur in any Commission decision to decommission an individual site. Therefore, the Commission plans to rely on the GEIS to satisfy its obligations under the National Environmental Policy Act in regard to individual decommissioning decisions that meet the 15 mrem/yr criterion for unrestricted use. However, the Commission will still initiate a preliminary environmental review in regard to any particular site to determine if the generic analysis encompasses the range of environmental impacts at that particular site.

The proposed rule would also provide for the termination of the license and the release of a site under restricted conditions if the licensee can demonstrate that the use of land use restrictions or other types of institutional controls will provide reasonable assurance that the 15 mrem/yr limit can be met. The types of controls and their contribution to providing reasonable assurance that the 15 mrem/yr limit can be met for a particular site will differ for each site in this category. Therefore, the environmental impacts cannot be analyzed on a generic basis and the Commission will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied on by the licensee.

The GEIS indicates that the decommissioning of certain classes of licensees (e.g., licensees using only sealed sources) will not individually or cumulatively have a significant effect on the human environment. Therefore, for these categories of licensees, the Commission is proposing to amend 10 CFR Part 51.22 of the Commission's regulations to specify that the decommissioning of these types of licenses are actions eligible for categorical exclusion from the Commission's environmental review process.

**Use of Land Use Restrictions or Other Types of Institutional Controls To Allow Termination of the License and Release of the Site Under Restricted Conditions**

Although the Commission anticipates that most licenses can be terminated for unrestricted use, the Commission also anticipates that there may be situations where the site radiological criteria can only be met through the use of land use or other types of institutional controls which will restrict the site to specific uses. For example, there may be some sites where unrestricted use for agricultural purposes or residential uses would cause the proposed criteria to be exceeded. However, restricting the same site to industrial or commercial uses would enable the site to meet the 15 mrem/y TEDE dose limit because the exposure pathways would be limited. The licensee, with the advice of the Site Specific Advisory Board, would propose certain types of land use or institutional controls in the decommissioning plan submitted for Commission approval, to provide reasonable assurance that the site would be limited to the types of uses that would enable the proposed criteria to be met.

Examples of these controls include traditional zoning controls to restrict the use of the site to specific uses, the imposition of deed restrictions such as restrictive covenants or equitable servitudes to restrict the land to certain uses, negative easements where the licensee-landowner agrees to restrict the use of the land to specified uses, licensee agreements to restrict the use of certain portions of the land (for example, restricting access to a particular building), or even some type of government ownership of the property. Whatever type of controls are proposed by the licensee, the licensee must demonstrate that the controls proposed have a reasonable expectation of enforcement. A decommissioning plan that is dependent on land use or institutional controls whose enforcement are speculative would not be approved.

*Implementation*

The Commission recognizes that demonstrating that radioisotope levels at a site are indistinguishable from background may be a complex task involving sophisticated sampling, measuring, and statistical analysis techniques. The difficulty of the task can vary substantially depending on a number of factors that include the radionuclide in question, the background level for that and other radionuclides at the site, and the temporal and spatial variations in background radiation at the site. Therefore, in order to assist the licensee in making these determinations, the Commission will publish specific guidance on acceptable methods which can be used by the licensee to demonstrate that the concentrations of specific radionuclides at the site are indistinguishable from background. The Commission will also publish specific guidance on acceptable methods for estimating annual TEDE to the average member of the Critical Group. This guidance will include a discussion of the type of scenarios and exposure pathways which should be considered, and computer models for estimating the annual TEDE to the average member of the critical group. The computer models will include screening models which employ generically derived conservative assumptions and factors.

However, licensees will be able to substitute assumptions and factors more appropriate to a particular site if they

can demonstrate that these factors and assumptions reasonably reflect the conditions at the site. Licensees may also use other models or methods for estimating TEDE provided they can demonstrate to the Commission that these models or methods provide reasonable estimates for the site to be decommissioned. When using modeling to estimate doses from radioactivity remaining at the site, the licensee will be able to use site specific parameters wherever practical. In the absence of site-specific information, the licensee must use parameters which provide a sufficient margin of safety that the Commission can make a finding that there is reasonable assurance the TEDE criteria in this part will be met.

An NRC staff working draft regulatory guide will be published simultaneously with the proposed rule as NUREG–1500, "Working Draft Regulatory Guide on Release Criteria for Decommissioning: NRC Staff's Draft for Comment." This publication allows licensees and interested members of the public to provide early comment during the developmental process. The draft regulatory guide has no official regulatory standing. The NRC staff anticipates that the draft regulatory guide will be published with the final rule and will incorporate public comments and the results of continued technical development activities. The draft regulatory guide published with the final rule will be for interim use and comment to fulfill the rule requirements and test implementation options. The final regulatory guide will be published approximately 1 to 2 years after publication of the final rule and would take into consideration comments on the draft guide as well as information regarding experience in implementing the draft guidance.

The draft regulatory guide provides guidance on methods that are acceptable to the NRC staff for determining the predicted dose level (PDL) from any residual contamination remaining at a facility, that should be compared to the numerical dose criteria specified in the regulation. It describes the basic features of the calculational models and the associated default assumptions and parameter values that the NRC staff would find acceptable in calculating PDLs. Appendices to the guide provide numerical values that are used to estimate the dose from various residual radioactivity levels remaining at a facility. Also included are the considerations inherent in the ALARA process for decommissioning. Because the proposed 10 CFR Part 20, Subpart E introduces several new concepts, a regulatory position concepts section containing definitions and discussions is included to assist licensees in understanding some of the philosophy underlying the rule. The regulatory position concepts section is followed by the regulatory position procedures section that describes actions the licensee can take to implement the requirements of the decommissioning rule.

The Commission has also issued the following supporting documents to provide guidance on implementation of the residual contamination criteria in the proposed rule:

(1) "Guidance Manual for Conducting Radiological Surveys in Support of License Termination" (NUREG/CR–5849), and

(2) Technical Basis Document, "Residual Radioactive Contamination from Decommissioning: Technical Basis for Translating Contamination Levels to Annual TEDE" (NUREG/CR–5512).

The Guidance Manual for Conducting Radiological Surveys is intended to provide licensees with specific guidance on planning, conducting, and documenting site surveys which could be used to demonstrate that the site has been decontaminated to a level consistent with the Commission's criteria. The Technical Basis Document would provide an acceptable method for translating residual radioactivity levels (measurable quantities) to doses to individuals. Generic dose rate conversion factors are being developed for screening. In addition, the technical basis is expected to include a computer model which can be used for conducting a screening scenario/pathway analyses with site-specific parameters so that site-specific dose rate conversion factors can be calculated. The NRC anticipates that in most cases these dose rate conversion factors could be used to determine compliance with criteria resulting from the rulemaking action.

The NRC staff is continuing to work with the EPA and the DOE in the development of coordinated Federal Agency guidance on site surveys. The Commission anticipates endorsing such guidance for use in demonstrating compliance with the requirements of this rulemaking when it becomes available.

### Agreement State Compatibility

The Commission currently is developing a new policy on Agreement State compatibility which will be issued for public comment in the near future. The compatibility determination for the radiological criteria for decommissioning will be considered in regard to the implementation of the new compatibility policy. Therefore, the Commission believes that it would be premature to make a proposed compatibility determination on the radiological criteria for decommissioning at this time. However, for the purpose of facilitating the ultimate resolution of the compatibility determination for the radiological criteria for decommissioning, the Commission welcomes any comments on this issue. In particular, the Commission invites comments on to what extent and under what circumstances should an Agreement State be authorized to establish more stringent requirements than those set forth in NRC radiological criteria for decommissioning.

### Draft Generic Environmental Impact Statement: Availability

As required by the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the NRC has prepared a draft generic environmental impact statement (NUREG–1496) on this proposed rule. For informational purposes and ease of distribution, Appendix A of the draft generic environmental impact statement has been published as a separate report, "Background as a Residual Radioactivity Criterion for Decommissioning: Appendix A of the Draft Environmental Impact Statement in Support of Radiological Criteria for Rulemaking on Decommissioning" NUREG–1501.

The draft generic environmental impact statement is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft generic environmental impact statement (NUREG–1496) or Appendix A of the draft generic environmental impact statement (NUREG–1501) may be obtained by written request or telefax (301–504–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Background documents on the rulemaking, including the text of the proposed rule, the Draft GEIS, Appendix A of the Draft GEIS, the Regulatory Analysis, and the staff's working draft Regulatory Guide are also available for downloading and viewing on the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, 1–800–880–6091. (See 58 FR 37760 (July 13, 1993)). The bulletin board may be accessed using a personal computer, a modem, and most

commonly available communications software packages. The communications software should have parity set to none, data bits to 8, and stop bits to 1 (N,8,1) and use ANSI or VT–100 terminal emulation. For more information call Ms. Christine Daily, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 415–6026; FAX (301) 415–5385.

The NRC requests public comment on the draft generic environmental impact statement. Comments on the draft statement may be submitted to the NRC as indicated under the **ADDRESSES** heading.

**Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 31.6 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 the burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0014), Office of Management and Budget, Washington, DC 20503.

**Regulatory Analysis**

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained by written request from RPHEB Secretary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Background documents on the rulemaking, including the text of the proposed rule, the Draft GEIS, Appendix A of the Draft GEIS, the Regulatory Analysis, and the NRC staff working draft Regulatory Guide are also available for downloading and viewing on the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, 1–800–880–6091. (See 58 FR 37760 (July 13, 1993)). The bulletin board may be accessed using a personal computer, a modem, and most commonly available communications software packages. The communications software should have parity set to none, data bits to 8, and stop bits to 1 (N,8,1) and use ANSI or VT–100 terminal emulation. For more information call Ms. Christine Daily, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 415–6026; FAX (301) 415–5385.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. Although the proposed rule would cover all 22,000 licensees regulated by the NRC and Agreement States, small entities covered by this rule are primarily licensees that possess and use only materials with short half-lives or materials only in sealed sources. Decommissioning efforts for these licensees are simple and require only that sealed sources are properly disposed of or that short-lived materials are allowed to decay. Complete details of the cost analysis are contained in Section 4.5 of the Regulatory Analysis.

Although there is no indication that this proposed rule would significantly impact a substantial number of small entities, the NRC is seeking comments from small entities that may be impacted by the rule. Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee;

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects**

*10 CFR Part 20*

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational and public dose limits, Occupational safety and health, Packaging and containers, Permissible doses, Radiation protection, Reporting and recordkeeping requirements, Respiratory protection, Special nuclear material, Source material, Surveys and monitoring, Waste treatment and disposal.

*10 CFR Part 30*

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

*10 CFR Part 40*

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 50*

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

*10 CFR Part 51*

Administrative practice and procedure, Environmental impact statements, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 70*

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 72*

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Parts 20, 30, 40, 50, 51, 70 and 72.

## PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

**Authority**: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (2 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

2. In 10 CFR 20.1003, "Definitions," the definition of background radiation is revised and new definitions *Critical Group, Decommissioning, Indistinguishable from background, Readily removable, Residual Radioactivity,* and *Site-Specific Advisory Board* are added in alphabetical order to read as follows:

**§ 20.1003 Definitions.**

* * * * *

*Background radiation* means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents like Chernobyl which contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from source, byproduct, or special nuclear materials regulated by the Commission.

* * * * *

*Critical Group* means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

* * * * *

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

* * * * *

*Indistinguishable from background* means that the detectable concentration of a radionuclide is not statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

* * * * *

*Readily removable* means removable using non-destructive, common, housekeeping techniques (e.g., washing with moderate amounts of detergent and water) that do not generate large volumes of radioactive waste requiring subsequent disposal or produce chemical wastes that are expected to adversely affect public health or the environment.

* * * * *

*Residual radioactivity* means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

* * * * *

*Site-Specific Advisory Board (SSAB)* means a committee constituted by the licensee to provide advice to the licensee on decommissioning.

* * * * *

3. In § 20.1009, paragraph (b) is revised to read as follows:

**§ 20.1009 Information collection requirements: OMB approval.**

* * * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1101, 20.1202, 20.1204, 20.1206, 20.1301, 20.1302, 20.1403, 20.1405, 20.1407, 20.1408, 20.1501, 20.1601, 20.1703, 20.1901, 20.1902, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2206, and Appendix F.

4. A new Subpart E entitled "Radiological Criteria for Decommissioning," is added to 10 CFR Part 20 to read as follows:

### Subpart E—Radiological Criteria for Decommissioning

Sec.

20.1401 Scope.
20.1402 Concepts.
20.1403 General provisions.
20.1404 Radiological criteria for unrestricted release.
20.1405 Criteria for license termination under restricted conditions.
20.1406 Notification and public participation.
20.1407 Site-Specific Advisory Board.
20.1408 Minimization of contamination.

**§ 20.1401 Scope.**

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under Parts 30, 40, 50, 60, 61, 70, and 72 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR Parts 60 and 61), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. For uranium mills, the criteria apply to decommissioning of the facility but not to the disposal of uranium mill tailings or to soil cleanup. (See Appendix A of 10 CFR Part 40).

(b) The criteria in this subpart do not apply to sites already covered by a decommissioning plan approved by the Commission before [insert effective date of rule] and in accordance with the criteria identified in the Site Decommissioning Management Plan Action Plan of April 16, 1992 (57 FR 13389).

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this proposed rule, the Commission will require additional cleanup only if, based on new information, it determined that residual radioactivity remaining at the site could result in significant public risk.

(d) This subpart also requires that, after the effective date of rule, applicants for licenses, other than renewals, describe in the application how facility design and procedures for operation will minimize contamination of the facility and the environment, facilitate eventual decommissioning,

and minimize the generation of radioactive waste.

**§ 20.1402 Concepts.**

(a) The objective of decommissioning is to reduce the residual radioactivity in structures, materials, soils, groundwater, and other media at the site so that the concentration of each radionuclide that could contribute to residual radioactivity is indistinguishable from the background radiation concentration for that radionuclide. The Commission realizes that, as a practical matter, it would be extremely difficult to demonstrate that such an objective has been met. Therefore, the Commission has established a site release limit and is requiring that licensees demonstrate that the residual radioactivity at a site is as far below this limit as reasonably achievable.

(b) The limit for release of a site is 15 mrem/y (0.15 mSv/y) Total Effective Dose Equivalent (TEDE) to an average member of the Critical Group for residual radioactivity distinguishable from background. If doses from residual radioactivity are less than 15 mrem/y TEDE, the Commission will terminate the license and authorize release of the site for unrestricted use following the licensee's demonstration that the residual radioactivity at the site has been reduced to As Low As Reasonably Achievable (ALARA).

(c) ALARA considerations must include all significant risks to humans and the environment resulting from the decommissioning process. Licensees shall demonstrate why further reductions below the limit are not reasonably achievable. Depending on the site-specific ALARA analysis, any dose level less than or equal to 15 mrem/y may be considered ALARA. However, in many situations, licensees may have little or no site contamination and should be able to readily achieve the overall objective for decommissioning (e.g., licensees that use only sealed sources or short-lived radioisotopes).

(d) The Commission expects the licensee to make every reasonable effort to reduce residual radioactivity to levels that will allow unrestricted release of the site. However, the Commission will consider terminating a license in cases where restrictions must be imposed on the use of the site to ensure that public doses are maintained below the 15 mrem/y (0.15 mSv/y) TEDE limit, provided the licensee:

(1) Can demonstrate by analysis of the benefits and risks of further reduction that residual radioactivity at the site is ALARA and that further reductions in residual radioactivity necessary to comply with the 15 mrem/y TEDE limit for unrestricted use are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(2) Has made adequate provisions for institutional controls to reduce annual TEDE from residual radioactivity distinguishable from background to the average member of the appropriate critical group to 15 mrem (0.15 mSv) TEDE;

(3) Has provided sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(4) Has reduced the residual radioactivity at the site so that the TEDE from residual radioactivity would not exceed 100 mrem (1 mSv) per year even if the restrictions applied in the termination were no longer effective in limiting the possible scenarios or pathways of exposure.

**§ 20.1403 General provisions.**

(a) When calculating TEDE, the licensee shall base estimates on the greatest annual TEDE dose expected within the first 1000 years after decommissioning. Estimates must be substantiated using actual measurements to the maximum extent practical.

(b) When determining ALARA, the licensee shall consider all significant risks to humans and the environment resulting from the decommissioning process (including transportation and disposal of radioactive wastes generated in the process) and from residual radioactivity remaining at the site following termination of the license.

(c) During decommissioning, the licensee shall take reasonable steps to remove all readily removable residual radioactivity from the site.

(d) The licensee shall demonstrate a reasonable expectation that residual radioactivity from the site will not cause the level of radioactivity in any groundwater that is a current or potential source of drinking water to exceed the limits specified in 40 CFR Part 141 as they exist on [insert effective date of this regulation].

(e) Licensee notification to the Commission of intent to decommission in accordance with §§ 30.36(b), 40.42(b), 50.82(a), 70.38(b) or 72.54 of this chapter shall specify whether the licensee intends to decommission in accordance with § 20.1405. Licensees proposing to decommission in accordance with § 20.1405 shall submit a plan for establishing and supporting a Site Specific Advisory Board (SSAB).

(f) Licensees proposing to decommission in accordance with § 20.1405, shall submit a decommissioning plan to the Commission. This plan shall include the recommendations of the SSAB and the licensee's proposed analysis and disposition of this advice.

**§ 20.1404 Radiological criteria for unrestricted release.**

A site will be considered acceptable for unrestricted use if:

(a) The residual radioactivity that is distinguishable from background radiation results in a TEDE to the average member of the critical group that does not exceed 15 mrem (0.15 mSv) per year; and

(b) The residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA).

**§ 20.1405 Criteria for license termination under restricted conditions.**

A site will be considered acceptable for license termination under restricted conditions if:

(a) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of § 20.1404 are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm; and

(b) The licensee has made provisions for institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 15 mrem (0.15 mSv) TEDE per year. Institutional controls must be enforceable by a responsible government entity or in a court of law in response to suits by affected parties; and

(c) The licensee has provided sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(1) Funds placed into an account segregated from the licensee's assets and outside the licensee's administrative control as described in § 30.35(f)(1) of this chapter;

(2) Surety method, insurance, or other guarantee method as described in § 30.35(f)(2) of this chapter; or

(3) A statement of intent in the case of Federal, State, or local government licensees, as described in § 30.35(f)(4) of this chapter.

(d) Residual radioactivity at the site has been reduced so that if the

institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group would not exceed 100 mrem (1 mSv) per year, and is as low as reasonably achievable. Calculations used to show compliance with this provision may not assume any benefits from earthen cover or other earthen barriers unless specifically authorized by the Commission.

**§ 20.1406 Public notification and public participation.**

(a) Upon the receipt of a decommissioning plan from the licensee, or a proposal by the licensee for restricted release of a site pursuant to § 20.1405, or whenever the Commission deems such notice to be in the public interest, the Commission shall:

(1) Notify and solicit comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(2) Publish a notice in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site and solicit comments from affected parties.

(b) For decommissioning where the licensee does not propose to meet the conditions for unrestricted release pursuant to § 20.1404 of this part, the licensee shall convene a Site Specific Advisory Board (SSAB) as described in § 20.1407 for the purpose of obtaining advice from affected parties regarding the proposed decommissioning.

**§ 20.1407 Site Specific Advisory Board.**

(a) The SSAB should provide advice to the licensee, as appropriate, on:

(1) Whether there are ways to reduce residual radioactivity to a level necessary to comply with the provisions of § 20.1404 which are technically achievable, would not be prohibitively expensive and would not result in net public or environmental harm;

(2) Whether provisions for institutional controls proposed by the licensee:

(i) Will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 15 mrem (0.15 mSv) TEDE per year;

(ii) Will be enforceable; and

(iii) Will impose undue burdens on the local community or other affected parties.

(3) Whether the licensee has provided sufficient financial assurance to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site.

(b) Membership of the SSAB shall to the extent that representatives are willing to participate:

(1) Reflect the full range of interests in the affected community and region, and be composed of individuals who could be directly affected by residual radioactivity at the decommissioned site;

(2) Be selected from individuals nominated by organizations which represent these interests; and

(3) Include representatives from the licensee; local and state governments; persons residing in the vicinity of the site; citizen, environmental, environmental justice, and other public interest groups; and Indian Nation or other indigenous people that have treaty or statutory rights that could be affected.

(c) The SSAB shall consist of approximately 10 members plus an *ex officio* representative selected by the Commission.

(d) The licensee shall be responsible for establishing the SSAB and the developing of appropriate SSAB operating procedures with the advice of the SSAB.

(e) The licensee shall provide adequate administrative support for SSAB activities and shall provide the SSAB access to studies and analyses that are readily available to the licensee and are pertinent to the proposed decommissioning.

(f) Meetings of the SSAB are open to the public. The licensee shall provide adequate public notice of the location, time, date, and agenda for the meetings at least 2 weeks in advance of each meeting. All records generated or reviewed by the SSAB become part of the docket, must be retained by the licensee until the license is terminated, and must be available for public inspection.

**§ 20.1408 Minimization of contamination.**

Applicants for licenses, other than renewals, after [insert effective date of rule], shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

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

5. 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 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (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).

6. In § 30.4, "Definitions," the definition of *decommission* is revised to read as follows:

**§ 30.4 Definitions.**

* * * * *

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

* * * * *

7. In § 30.35, paragraph (g)(3)(iv) is revised to read as follows:

**§ 30.35 Financial assurance and record keeping for decommissioning.**

* * * * *

(g) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

8. In § 30.36, paragraphs (c)(1)(v),(d), and (f)(3) are revised to read as follows:

**§ 30.36 Expiration and termination of licenses.**

* * * * *

(c)(1) * * *

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in accordance with NRC requirements in some other manner.

* * * * *

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release in accordance with NRC requirements, the Commission will inform the licensee of the appropriate further actions required for termination of license.

* * * * *

(f) * * *

(3) (i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

9. The authority citation for Part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

10. In § 40.4, "Definitions," the definition of *decommission* is revised to read:

**§ 40.4 Definitions.**

* * * * *

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

* * * * *

11. In § 40.36, paragraph (f)(3)(iv) is revised to read as follows:

**§ 40.36 Financial assurance and record keeping for decommissioning.**

* * * * *

(f) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

* * * * *

12. In § 40.42, paragraphs (c)(1)(v),(d), and (f)(3) are revised to read as follows:

**§ 40.42 Expiration and termination of licenses.**

* * * * *

(c)(1) * * *

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in accordance with NRC requirements in some other manner. The licensee shall, as appropriate—

* * * * *

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release in accordance with NRC requirements, the Commission will inform the licensee of the appropriate further actions required for termination of license.

* * * * *

(f) * * *

(3) (i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

13. The authority citation for Part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 is also issued under Pub. L 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 82 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

14. In § 50.2, "Definitions," the definition of *decommission* is revised to read:

**§ 50.2 Definitions.**

* * * * *

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

* * * * *

15. In § 50.82, paragraph (f)(2)is revised to read as follows:

**§ 50.82 Application for termination of license.**

* * * * *

(f) * * *

(2) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release in accordance with NRC requirements.

## PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

16. The authority citation for Part 51 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161,

10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

17. In § 51.22, paragraph (c)(19) is added to read as follows:

**§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.**

* * * * *

(c) * * *

(19) Decommissioning of sites where licensed operations have been limited to the use of:

(i) Small quantities of short-lived radioactive materials, or

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources.

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

18. The authority citation for Part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

19. In § 70.4, "Definitions," the definition of *decommission* is revised to read as follows:

**§ 70.4 Definitions.**

* * * * *

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

* * * * *

20. In § 70.25, paragraph (g)(3)(iv) is revised to read as follows:

**§ 70.25 Financial assurance and record keeping for decommissioning.**

* * * * *

(g) * * *

(3) * * *

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

21. In § 70.38, paragraphs (c)(1)(v),(d), and (f)(3) are revised to read as follows:

**§ 70.38 Expiration and termination of licenses.**

* * * * *

(c)(1) * * *

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in accordance with NRC requirements in some other manner.

* * * * *

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release in accordance with NRC requirements, the Commission will inform the licensee of the appropriate further actions required for termination of license.

* * * * *

(f) * * *

(3) (i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

22. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a) 96 Stat. 2252 (42 U.S.C. 10198).

23. In § 72.3, "Definitions," the definition of *decommission* is revised to read as follows:

**§ 72.3 Definitions.**

* * * * *

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.

* * * * *

24. In § 72.54, paragraph (e)(2) is revised to read as follows:

**§ 72.54 Application for termination of license.**

* * * * *

(e) * * *

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI or MRS and site are suitable for release in accordance with NRC requirements.

Dated at Rockville, Maryland, this 15th day of August 1994.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

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Part IV

# Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Drug Products for the Treatment and/or Prevention of Nocturnal Leg Muscle Cramps for Over-the-Counter Human Use; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR part 310**

**[Docket No. 77N–0094]**

**RIN 0905–AA06**

## Drug Products for the Treatment and/or Prevention of Nocturnal Leg Muscle Cramps for Over-The-Counter Human Use

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) drug product for the treatment and/or prevention of nocturnal leg muscle cramps is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on drug products for the treatment and/or prevention of nocturnal leg muscle cramps that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

**EFFECTIVE DATE:** February 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 1, 1982 (47 FR 43562), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to reopen the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products to consider the OTC use of quinine for the treatment of nocturnal leg muscle cramps, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 30, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 31, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps was published in the **Federal Register** of November 8, 1985 (50 FR 46588). Interested persons were invited to file by January 7, 1986, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by March 10, 1986. New data could have been submitted until November 10, 1986, and comments on the new data could have been submitted until January 8, 1987. Final agency action occurs with the publication of this final rule on OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps.

In the preamble to the agency's proposed rule on OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps (50 FR 46588), the agency stated that no active ingredient in drug products used OTC for the treatment and/or prevention of nocturnal leg muscle cramps had been found to be generally recognized as safe and effective and not misbranded, but that Category I labeling was being proposed in that document in the event that data were submitted that resulted in the upgrading of any ingredients to monograph status in the final rule. In this final rule, no ingredient in OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps has been determined to be generally recognized as safe and effective. Therefore, proposed part 343 (21 CFR 343), subpart E for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps is not being issued as a final regulation.

This final rule declares OTC drug products containing active ingredients for the treatment and/or prevention of nocturnal leg muscle cramps to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing active ingredients for the treatment and/or prevention of nocturnal leg muscle cramps by adding new § 310.546 (21 CFR 310.546) to subpart E. The inclusion of OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps in part 310 is consistent with FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC drug product for the treatment and/or prevention of nocturnal leg muscle cramps, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed rule for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps (50 FR 46588), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the **Federal Register** for relabeling and reformulation of drug products for the treatment and/or prevention of nocturnal leg muscle cramps to be in compliance with the monograph. Although several manufacturers submitted data and information in response to the proposed rule, the data and information were not sufficient to

support monograph conditions, and no monograph is being established at this time. Therefore, drug products for the treatment and/or prevention of nocturnal leg muscle cramps that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). The agency also stated that if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products. As stated below, a safety problem has been identified for OTC drug products containing quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps. Therefore, the agency has determined that initial introduction or initial delivery for introduction into interstate commerce of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps must cease effective February 22, 1995. After that date, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application. The agency is unaware of any quinine sulfate drug product for this indication that is the subject of an approved application. Any such drug product in interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

In response to the proposed rule on OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps, three drug manufacturers and a nutrition information service submitted comments. One comment included a request for an oral hearing before the Commissioner of Food and Drugs.

After the administrative record closed, a citizen petition was submitted on December 1, 1988. In response to this petition, nine additional comments were submitted. The Commissioner found that the petition and subsequent comments raised safety and effectiveness issues that warranted consideration before the final rule issued. Accordingly, under § 330.10(a)(7)(v), the Commissioner determined that good cause was shown to warrant consideration of the petition and the additional comments before the final rule issued. Copies of the comments received and the petition are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

## I. The Agency's Conclusions on the Comments

### *A. General Comments*

1. One comment disagreed with the agency's determination that adequate clinical data did not exist to support the Category I status of quinine for both safety and effectiveness for OTC use in the treatment and/or prevention of nocturnal leg muscle cramps (50 FR 46588 at 46590). The comment expressed the belief that sufficient evidence already exists for this use of quinine. In support of its position, the comment referred to information it had submitted on December 27, 1982, in response to the advance notice of proposed rulemaking for this class of drug products.

The agency discussed this information in the tentative final monograph (50 FR 46588 at 46589) and concluded that it did not provide sufficient evidence to establish that quinine is generally recognized as safe and effective for OTC use for the treatment and/or prevention of nocturnal leg muscle cramps. The agency identified the issues to be addressed in studies before quinine could be reclassified from Category III to Category I (50 FR 46590 and 46591). The comment did not provide any new information to address these issues. New data and information submitted by other interested persons are discussed in section I.B., comments 4 through 9 of this document.

### *B. Comments on the Safety of Nocturnal Leg Muscle Cramp Ingredients*

2. Two comments contended that FDA accepted the safe OTC use of quinine sulfate for nocturnal leg cramps when it published, and did not dissent from, the Miscellaneous Internal Panel's conclusions and recommendations that "* * * quinine appears to be reasonably safe over prolonged periods of time in generally recommended doses of 200 to 325 mg daily" (47 FR 43562 at 43564).

Contrary to the comments' contention, the record makes it clear that neither the agency nor the advisory panels accepted the safety of OTC use of quinine for nocturnal leg muscle cramps. The July 8, 1977 report of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (42 FR 35346 at 35434) summarized the safety of quinine and stated "Although quinine has demonstrated analgesic, antipyretic and muscle relaxant actions, its numerous toxic effects give it an unfavorable benefit to risk ratio for these purposes." The Panel concluded that "Until controlled studies show that a dose of not more than 325 mg daily is safe and useful for relief of nocturnal leg cramps the drug should not be available for OTC use for treatment of nocturnal leg cramps." While the Miscellaneous Internal Panel's report stated that quinine "* * * appears to be reasonably safe * * *" (47 FR 43564), the Panel did not conclude that quinine was safe in doses used for the treatment of nocturnal leg muscle cramps. The Panel's recommendation that quinine should be placed in Category III for use in the treatment of nocturnal leg muscle cramps cited the need for more information about both safety and efficacy in its concluding statement (47 FR 43564).

In the tentative final monograph for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps, the agency concurred with: (1) The Miscellaneous Internal Panel's classification of quinine sulfate as Category III, and (2) the Internal Analgesic Panel's conclusion that the drug should not be generally recognized as safe and effective (Category II) for this use until its safety and efficacy are demonstrated in controlled clinical trials (50 FR 46588 at 46592). It is clear, therefore, that neither the agency nor its advisory panels have determined that quinine may be safely used for this indication.

3. Three comments stated that quinine has been safely used by millions of consumers for a variety of conditions, including leg cramps, for more than 50 years, and that this long history of usage demonstrates the safety of quinine.

General reference to the history of use of quinine cannot be accepted as evidence of its safety. Historically, there has been no clear location for the organized collection and analysis of adverse drug experience reports on OTC drug products. Adverse events associated with OTC drug products are still vastly underreported for a number of reasons. First, for most OTC drugs there is no requirement that manufacturers and distributors report adverse events to the FDA, even those that are serious or life threatening. Second, physicians, who are the principal reporters to the United States spontaneous reporting system, may not become aware of reactions to OTC drugs. Patients often do not mention OTC drugs in giving medication histories. If they do, it is often not clear to physicians to which manufacturer the adverse event should be reported.

4. Two comments in support of keeping quinine available OTC discussed the adverse event reports on

file for quinine in FDA's spontaneous reporting system. Lavy (Ref. 1) stated that there were 52 reports suggestive of hypersensitivity reactions, including 8 deaths, among the reports on file from 1969 to 1988. Lavy concentrated on reports of thrombocytopenia (a decrease in the number of blood platelets) and stated that bleeding secondary to thrombocytopenia may have been related to four of the eight deaths reported in this 20-year period. The comment stated that only one case provided sufficient information to fulfill all diagnostic criteria for drug-induced immunologic thrombocytopenia (consistent clinical history, exclusion of other causes, positive in vitro test and, theoretically, the demonstration of recurrent thrombocytopenia after rechallenge). Lavy pointed out that adverse event reports should reflect a significant prevalence of severe quinine-associated purpura (if occurring) because this reaction is readily identifiable by the patient, physician, and hospital. Using industry quinine sales figures and data from the FDA spontaneous reporting system, Lavy concluded that the number of reported quinine-related hypersensitivity reactions is quite low, even if greatly underreported.

Aster (Ref. 2) reviewed adverse drug reactions reported to FDA from 1969 through December 1989 and estimated that approximately 1,000 reactions in 313 individuals were reported for quinine. Aster's estimate was not limited to hypersensitivity reactions, but included all reported reactions (including multiple reactions per individual). Aster did not report the specific search criteria used to obtain the adverse drug reaction reports other than to state that the "FDA materials provide a cumulative listing of all adverse drug reactions (ADR) reported in connection with quinine since 1969." After eliminating reactions considered highly unlikely to bear a cause-and-effect relationship to quinine, Aster identified 254 reactions that he considered "significant." There were 83 hematologic reactions and 46 additional reactions possibly associated with hypersensitivity. Of 63 possible cases of thrombocytopenia, 36 included information verifying low platelet levels. Aster identified 50 fatalities (15 from hematologic complications, 3 from hypersensitivity, and 32 from other causes). Overall, Aster classified 51 percent of the adverse reactions as idiosyncratic and eight percent as the result of overdose. The remaining 41 percent were of indeterminate etiology and consisted of liver and kidney dysfunction, neurologic disorders, and various hemorrhagic manifestations. Of the reports in which inadequate information was provided for full evaluation, Aster noted the possibility that some of the six cerebrovascular accidents reported may have been associated with thrombocytopenia induced by quinine. Aster concluded that: (1) No information is available that would enable the identification of people at risk to sensitivity reactions to quinine; (2) the rarity of sensitivity reactions and the rapidity with which they occur make early detection of such reactions impossible and, (3) the dramatic symptomatology of such reactions, when they occur, leads people to seek prompt medical attention. Aster concluded, therefore, that serious adverse reactions would neither be prevented nor reduced in incidence by restricting quinine availability to prescription status.

The agency has reviewed the comments and the reports of adverse reactions to quinine products (listed in the agency's spontaneous reporting system under quinine, quinine sulfate, and three brand name products used for the treatment and/or prevention of nocturnal leg muscle cramps). From 1969 through June 1992, FDA received 157 adverse reaction reports in which quinine was listed as a suspect drug. There were 84 serious reactions: 23 deaths, 5 cases in which the person was disabled, and 56 hospitalizations not involving death or disablement. Of the 157 adverse reaction reports, 52 (approximately 33 percent) did not contain dosage and/or product name information, or reported daily dosages in excess of those typically recommended for the treatment and/or prevention of nocturnal leg muscle cramps. The remaining 105 reports listed the names of quinine products labeled for use in the treatment and/or prevention of nocturnal leg muscle cramps and/or daily dosages recommended by these products, and included 60 serious reactions involving 16 deaths, 4 cases of disablement, and 40 hospitalizations not involving death or disablement. More importantly, 56 of the 105 reports (approximately 53 percent) have been received since 1988, and there is an alarming trend of increasing numbers of reports per year since 1986 as the market for OTC drug products containing quinine for the treatment and/or prevention of nocturnal leg muscle cramps has expanded during that period. Approximately 70 percent (42 of 60) of all reports of serious reactions, 44 percent (7 of 16) of all reported deaths, and 78 percent (31 of 40) of all reported hospitalizations on file since 1969 were reported in the 4 1/2-year period between January 1988 and July 1992. There were 20 cases (19 percent of reports on file) reported in 1991 alone: 3 were disabling, 11 required hospitalization, and 1 resulted in death.

Nocturnal leg muscle cramps are a common condition in the elderly (Ref. 3). Presumably, with an increasing average age in the American population, the market for OTC drug products containing quinine for the treatment and/or prevention of nocturnal leg muscle cramps also increased during this period. The number of adverse reaction reports for people 60 years of age or older, involving quinine products and/or quinine dosages used in the treatment and/or prevention of nocturnal leg muscle cramps, has increased by a factor of five (from 2 to 10) during the period between January 1988 and December 1991.

The agency conducted a detailed review of 110 reports on file from 1969 through 1990; 69 (approximately 63 percent) of these reports involved hypersensitivity reactions ranging from rash and fever to angioneurotic edema, thrombocytopenia, or generalized anaphylaxis. Of these 69 reports, 57 (approximately 83 percent) involved quinine products and/or quinine dosages used in the treatment and/or prevention of nocturnal leg muscle cramps. An attempt was made to identify only those reports in which the relationship between quinine and the reported event was strong and reasonably unrelated to other factors. Factors considered included the temporal relationship between quinine administration and the event, absence of concomitant medications (or abatement of the adverse event after quinine was discontinued), absence of confounding medical conditions, a positive test for quinine mediated antibodies, or history of a similar reaction associated with previous quinine exposure. Using these factors, of the 110 reports 26 were identified in which it can be reasonably concluded that quinine was the causative agent. These included 6 moderately severe to severe skin reactions, 2 of which were erythema multiforme-like reactions; 13 hematologic events, with 2 resulting in death; 2 cases of hepatitis or elevated liver enzymes; 2 renal reactions, one leading to renal failure requiring dialysis, the other leading to death; 2 cases of a hypersensitivity syndrome with symptoms that included chills, nausea, vomiting, and diarrhea; and 1 report of anaphylaxis complicated by seizures and hypoxia following a single

dose of quinine. None of these cases reported an overdose of the drug, and 21 of the 26 reports (approximately 81 percent) involved quinine products and/or quinine dosages used in the treatment and/or prevention of nocturnal leg muscle cramps.

Even using strict criteria to identify cases in which a causal relationship of quinine to adverse event is likely, FDA finds that quinine is associated with serious adverse events. There is no compelling reason to restrict evaluation of the safety of quinine to reported cases of thrombocytopenia, as Lavy did. The other adverse effects are also serious and must be considered in weighing the benefits and risks of products containing quinine. The agency agrees with Aster that there is currently no way in advance to identify people at risk of hypersensitivity reactions and, therefore, no effective way to warn against use by such individuals (see section I.B., comment 10). It does not agree, however, that physician monitoring might not minimize serious reactions. Thrombocytopenia, for example, can lead to bruising and other evidence of cutaneous bleeding. A physician could warn patients to report such signs and stop the drug, perhaps preventing a significant hemorrhagic event.

References

(1) Lavy, N. W., "Overview: Efficacy and Safety of Quinine Sulfate in the Treatment and/or Prevention of Nocturnal Leg Cramps", unpublished report in SUP00033, Docket No. 77N–0094, Dockets Management Branch.

(2) Aster, R. H., "Q-Vel: Could Serious Adverse Reactions be Prevented by Having the Drug Available Only on Prescription," unpublished report in Comment No. C176, Docket No. 77N–0094, Dockets Management Branch.

(3) Jones, K., and C. M. Castleden, "A Double-Blind Comparison of Quinine Sulphate and Placebo in Muscle Cramps," *Age and Ageing*, 12(2):155–158, 1983.

5. Several comments contended that the true incidence of quinine-induced thrombocytopenia is many times smaller than that suggested by estimates based on events reported from exposure to quinine-containing drug products alone. The comments contended that such estimates fail to account for the much larger exposure to quinine through beverages. Lavy estimated exposure to quinine in beverages to be about 10 times greater than exposure to quinine in drug products (Ref. 1). An agency search of the medical literature identified only 10 cases of hypersensitivity reactions attributed to quinine in beverages (Refs. 2 through 9). One of these reactions occurred following ingestion of a drug product containing quinine by a person presumed to have been previously sensitized by exposure to beverages (Ref. 5). None of these events was fatal.

The agency finds that the available information supports the safe use of quinine in beverages such as tonic water and bitter lemon. Given the level of consumption of quinine beverages, there is a scarcity of reported hypersensitivity reactions, even assuming that reactions to food products are vastly underreported.

Despite these safety data from beverage use, the agency does not consider pooling total consumption and adverse reaction data on quinine from food and drug products to be a legitimate basis to judge the safety of drug products containing quinine. First, there are differences in the quinine exposure levels because quinine is present in much greater amounts in drug products. Second, there is a great disparity in the incidence of reports of hypersensitivity reactions to beverage and drug products.

The agency considers the appropriate basis on which to estimate the incidence of hypersensitivity to quinine-containing drug products in leg cramp sufferers is to evaluate reports of reactions in the people who take such products at the dose, frequency, and for the duration recommended in product labeling. Adjusting the reported incidence of reactions to drug products by pooling data on beverages erroneously exaggerates the risk of reaction to quinine in beverages, vastly underestimates the risk of reaction to quinine-containing drug products, and contradicts the raw data on these products. Both the number and the severity of reported hypersensitivity reactions to drug products containing quinine raise safety concerns about these products (see section I.B., comment 4).

The agency considers the virtual absence of reports of reactions to beverages containing small amounts of quinine (i.e., not more than 83 parts per million) as support for the safety of such use. Thus, the use of quinine salts in food in accord with conditions described in 21 CFR 172.575 is not affected by this final rule on drug products for the treatment and/or prevention of nocturnal leg muscle cramps.

References

(1) Lavy, N. W., "Overview: Efficacy and Safety of Quinine Sulfate in the Treatment and/or Prevention of Nocturnal leg Cramps", unpublished report in SUP00033, Docket No. 77N–0094, Dockets Management Branch.

(2) Belkin, G. A., "Cocktail Purpura. An Unusual Case of Quinine Sensitivity," *Annals of Internal Medicine*, 66(3):583–586, 1967.

(3) Korbitz, B. C., and E. Eisner, "Cocktail Purpura. Quinine-dependent Thrombocytopenia," *Rocky Mountain Medical Journal*, 70(10):38–41, 1973.

(4) Siroty, R. R., "Purpura on the Rocks - With a Twist," *Journal of the American Medical Association*, 235(23):2521–2522, 1976.

(5) Elliott, H. L., and D. B. Trash, "Intravenous Coagulation Induced by Quinine," *Scottish Medical Journal*, 24(3):244–245, 1979.

(6) Murray, J. A. et al., "Bitter Lemon Purpura," *British Medical Journal*, 2(6204): 1551–1552, 1979.

(7) Calnan, C. D., and G. A. Caron, "Quinine Sensitivity," *British Medical Journal*, 2:1750–1752, 1961.

(8) Cundall, R. D., "Idiosyncrasy to Quinine in Bitter Lemon," *British Medical Journal*, 1:1638, 1964.

(9) Callaway, J. L., and W. E. Tate, "Toxic Epidermal Necrolysis Caused by 'Gin and Tonic'," *Archives of Dermatology*, 109:909, 1974.

6. Four comments submitted five reports (Refs. 1 through 5) of controlled clinical studies of quinine alone or in combination with vitamin E. The agency has reviewed these studies for evidence pertaining to the safety of quinine used to treat and/or prevent nocturnal leg muscle cramps.

The first study (Ref. 1) was a 10-week, crossover study of 69 subjects randomized to either 260 milligrams (mg) quinine sulfate or placebo. Subjects were 26 to 77 years of age, with a mean age of 51. Five adverse reactions to quinine (a 7 percent incidence) were reported. One subject was unable to tolerate the quinine because tinnitus (ringing in the ears) in both ears occurred while taking the study drug. Two additional subjects experienced tinnitus while taking quinine, but continued the medication and completed the study (although the protocol called for discontinuation of the study drug if ringing in the ears occurred). One additional subject experienced disorientation and another reported dizziness while taking quinine. No adverse events to placebo were reported.

The second study (Ref. 2) was a 10-week, double-blind, randomized, crossover study of 62 subjects receiving daily doses of either 325 mg quinine sulfate or placebo. Subjects were 21 to 76 years of age, with a mean age of 47. Three subjects on quinine and three subjects on placebo reported adverse events. The quinine reactions included tinnitus (which quickly resolved when the drug was discontinued), blurred vision, and headache, which occurred on 3 days during drug administration.

One of the subjects dropped out of the study because of dizziness and drowsiness. Another subject discontinued quinine for the last two days of the treatment period because of tinnitus. In the placebo group, one subject reported chest pains and heartburn; another subject experienced fever and nausea; and one subject reported constipation and dropped out of the study. An additional eight subjects dropped out of the study for reasons described in the report as not related to the drug products, but no details were provided.

The third study (Ref. 3) was a 5-week randomized, crossover study involving 205 subjects randomly assigned to quinine sulfate 260 mg/day, vitamin E 1,600 international units (I.U.)/day, a combination of quinine and vitamin E in the above doses, or placebo. Subjects were 18 to 80 years of age, with a mean age of 44. Twenty-seven adverse reactions were reported: 9 (4.4 percent) in subjects receiving the combination of quinine and vitamin E, 8 (3.9 percent) in subjects on quinine alone, 6 (2.9 percent) in subjects on vitamin E alone, and 4 (2 percent) in subjects receiving placebo. There was an almost twofold difference in overall adverse experiences when subjects were taking either of the test drugs containing quinine. Adverse events in subjects receiving quinine alone included stomach cramps, headache, nausea, diarrhea, swollen hands, and slight muscle twitching. Adverse events in subjects receiving the quinine and vitamin E combination included upset stomach, headache, diarrhea, tiredness, constipation, and pain in the legs. Adverse effects in subjects receiving vitamin E included abdominal cramps, vomiting, loose bowels, headache, and intensified menstrual cramps. Adverse events in the placebo group included nausea, stomach cramps, and tingly fingers. Gastrointestinal disturbances were reported by twice as many subjects when they were taking quinine alone or in combination than when assigned to vitamin E alone or placebo. Most of the adverse experiences in this study, irrespective of treatment group, were described by investigators as not related or probably not related to the study medication. Reported events, however, were consistent with those classically associated with quinine toxicity, which includes gastrointestinal symptoms (nausea, vomiting, abdominal pain, and diarrhea), vasodilation, sweating, headache, tinnitus, vertigo, and visual disturbances (Ref. 6).

The fourth study (Ref. 4) was a 5-week, crossover study involving 24 subjects 51 to 64 years of age (with a mean age of 57). All subjects received placebo in weeks 1, 3, and 5; half of the subjects were assigned to quinine sulfate (260 mg per (/) day) and half to the combination of quinine sulfate and vitamin E during week 2. In week 4, those subjects on the combination in week 2 were assigned to quinine alone and vice versa. Nausea was reported by 3 subjects (12.5 percent) who received quinine sulfate during week 2. No details of the reported reactions were provided. No other adverse events were reported.

The fifth and largest study was a multicenter, block-randomized, parallel design involving 559 subjects 18 to 84 years of age (Ref. 5). A 1-week, single-blind, placebo phase was followed by a 2-week, double-blind, randomized, treatment phase. Subjects who had at least one leg cramp per night for a minimum of 3 nights during the single-blind placebo week and met other selection criteria were randomized to one of four double-blind treatment groups: Quinine sulfate 259.2 mg (subject ages ranged from 19 to 79 years with a mean age of 46), vitamin E, 1,600 I.U. (subject ages ranged from 18 to 76 years with a mean age of 42), a combination of quinine and vitamin E in the above doses (subject ages ranged from 18 to 83 years with a mean age of 46), and placebo (subject ages ranged from 21 to 84 years with a mean age of 45). Besides meeting the criteria for frequency of nocturnal leg cramps, subjects admitted to the study were generally in good health, were predominantly female, and had a mean age of less than 50 years. The study report stated that no unexpected or idiosyncratic adverse events were seen "* * * among patients taking an effective course of therapy * * * nor was there a higher than usual incidence of recognized adverse drug reactions associated with ingestion of quinine."

One subject randomized to the combination product was reported to have experienced a reaction consisting of fever, headache, nausea, vomiting, and diffuse muscle pain after 5 days. The episode was sufficiently severe to warrant medical intervention in which the test drug (quinine/vitamin E) was stopped and the subject was treated with analgesic/antipyretic therapy and a prescription antiemetic. Symptoms subsided over 3 days. When the study medication was resumed, the subject again experienced nausea, vomiting, abdominal pain, severe headache, diffuse myalgia with severe pain in the legs, and fever. The subject required hospitalization. Therefore, the study drug was stopped. When the subject was discharged 5 days later, the physician advised her to consider herself sensitive to quinine. Given the temporal relationship between the onset of symptoms and administration of the study drug as well as the positive rechallenge, this case appears to be a well-documented hypersensitivity reaction.

In addition, another subject on quinine experienced itching, nausea, and vomiting and discontinued the drug. Two other subjects experienced moderately severe wheezing on the 8th and 12th days of quinine treatment, but neither subject discontinued the medication.

The overall incidence of adverse events reported in the fifth study (Ref. 5) was high and approximately equal in all groups (quinine sulfate, 43.3 percent; vitamin E, 37.2 percent; the combination of quinine sulfate and vitamin E, 39.3 percent; and placebo, 41.3 percent). Headache accounted for the greatest number of reported events in each group (quinine sulfate, 19.1 percent; vitamin E, 16.8 percent; combination of quinine sulfate and vitamin E, 19.1 percent; and placebo, 21 percent), but did not appear to be treatment related. Differences in the side- effect profile of the treatments emerge when only events with an incidence of 1 percent or more are considered, and both headache and events considered by the investigators as not related to the study drug are excluded. This analysis shows an adverse event rate of 12.8 percent with quinine sulfate (nausea, vomiting, diarrhea, dizziness, tinnitus, pruritus, and urticaria); 3.6 percent with vitamin E (nausea and myalgia); and 12 percent with the combination product (nausea, vomiting, diarrhea, tinnitus, and fever). None of the events reported by subjects on placebo, which the investigators considered potentially related to the study drug, had an incidence of 1 percent or more. Similarly, events reported to be severe or moderately severe (excluding headache and events with an incidence less than 1 percent) were more frequent in subjects taking quinine sulfate (6.4 percent) or the combination product (7.1 percent) than vitamin E alone (3.6 percent) or placebo (2.2 percent).

The potential for symptoms of quinine toxicity from the low doses generally recommended for the OTC treatment and/or prevention of nocturnal leg muscle cramps has been confirmed in several other studies (Refs. 7, 8, and 9). A recent study of the relationship between plasma quinine levels and hearing impairment (Ref. 7) found that quinine, even at low doses, produced auditory changes. In this

study, single oral doses of quinine of 5 milligrams/kilogram (mg/kg), 10 mg/kg, and 15 mg/kg were administered to six healthy females 24 to 39 years of age. The study did not specify subject weights. If subject weights of 50 to 60 kg were assumed, these doses would correspond to single quinine doses of 250 to 300 mg, 500 to 600 mg, and 750 to 900 mg, respectively. Even at the lowest dose (which is equivalent to the dose used in OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps), a drug effect on hearing impairment was detected in half of the subjects. When plasma concentrations exceeded 15 micromoles/liter (mmol/L), subjective hearing loss or tinnitus was observed in all subjects. No symptoms were detectable at levels below 5 mmol/L. The shift in hearing threshold was equal over the frequency range studied. The effect over time was consistent with the level of the dose given. The investigators concluded that a consistent effect-concentration relationship for hearing impairment caused by quinine can be defined by audiometry.

Zajtchuk (Ref. 8) compared the effect on vestibular and auditory function of 0, 52.5 mg, and 105 mg quinine administered in the form of commercial tonic water (containing 52.5 mg of quinine per 822 milliliter (mL) bottle) in 17 active duty military personnel. The study was initiated following findings of low levels of quinine in post-mortem tissues from military pilot fatalities. Tonic water was administered over a 3-hour period daily for 14 days. While control subjects and subjects given the low dose had normal function throughout the test, three of the four subjects given 105 mg/day developed transient vestibular abnormalities (manifested by rapid, involuntary, rhythmic movements of the eyeball associated with certain positions of the head or body) on positional testing.

Worden, Shephard, and Frape (Ref. 9) conducted two similar studies. In one study, 6 men and 14 women (18 to 39 years of age) were given 100 mg quinine hydrochloride daily in the form of tonic water for 14 days. In the second study, 4 men and 6 women (18 to 53 years of age) were divided into 2 groups. One group received 120 mg in a fortified tonic water, while the other drank a carbonated drink without quinine. No audiometric changes were found in any of the subjects in either study. However, 12 subjects (60 percent) in the first study complained of visual disturbances, 14 (70 percent) reported dizziness, and 14 (70 percent) experienced headache.

The potential for adverse effects from quinine may be greater in the elderly. A survey at one hospital (Ref. 10) of 201 inpatients 70 years of age or older found that 23 (11 percent) were taking quinine for cramps. Sixty percent were taking 300 mg nightly; 40 percent were taking twice that amount (600 mg nightly). Approximately one-third of these subjects had been taking the drug continuously and chronically for 2 years or more. The authors noted that the mean elimination half-life of quinine in elderly patients has been reported to be 19 hours compared with 8.5 hours in younger adults. The authors also stated that "Chronic therapy is likely to result in accumulation of quinine, putting elderly patients at greater risk of adverse effects. Possible adverse effects include symptoms of cinchonism (tinnitus, headache, nausea, rash, visual disturbance and temporary blindness), allergic reactions, and thrombocytopenia and haemolytic anaemia."

Wanwimolruk et al. (Ref. 11) found the elimination half-life of quinine to be 18.4 ± 5.7 hours in 8 healthy elderly subjects 65 to 78 years old compared with 10.5 ± 1.6 hours in 12 subjects 20 to 35 years old. Furthermore, a significantly greater amount of quinine was excreted unchanged in the elderly subjects, suggesting that quinine metabolism is reduced in elderly people. Overall, there was a 26-percent reduction in clearance of quinine in the older group. The authors concluded that accumulation of quinine may occur in elderly people, thus placing them at a greater risk of adverse events.

These studies indicate that serious safety concerns exist with regard to the OTC availability of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps. Subjects in all studies submitted were generally in good health, with a mean age of 44 to 57 years in the various groups. However, the adverse reactions reported in these studies suggest that quinine doses of 260 to 325 mg/day in healthy, middle-aged adults can produce symptoms of quinine toxicity, including auditory, visual, and gastrointestinal effects. Some studies (Refs. 7, 8, and 9) suggest that the vestibular, auditory, visual, and vascular effects of quinine can occur in healthy young adults at doses in and below the range commonly employed for the treatment and/or prevention of nocturnal leg muscle cramps. Altered pharmacokinetics with age also result in a longer half-life of quinine in older people. This longer half-life increases the frequency and severity of adverse effects in the elderly (Ref. 11), a group in which leg cramps are a common condition (Refs. 12 and 13). Therefore, the agency concludes that quinine is not safe for OTC use in the treatment and/or prevention of nocturnal leg muscle cramps.

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7. One comment (Ref. 1) requested a ban on the OTC marketing of any quinine sulfate products used in the treatment of nocturnal recumbency leg cramps. The comment based this request, in part, on adverse reactions reported to the FDA, including eight deaths it described as closely linked to quinine products. The comment contended that serious and fatal adverse reactions to quinine sulfate purchased OTC for this use continue to be reported. The comment mentioned that these reactions can occur in several ways: (1) In persons hypersensitive to quinine, (2) from the innate toxicity of quinine, or (3) as a result of interactions with other drugs, including digoxin, anticoagulants, and antiarrhythmics. The comment concluded that the risks associated with quinine used for leg cramps are unacceptable in light of its lack of efficacy for this use.

The agency agrees that quinine has the potential to elicit serious hypersensitivity reactions at doses employed in OTC drug products used for the treatment and/or prevention of nocturnal leg muscle cramps. The agency's spontaneous adverse reaction reporting system includes reasonably unconfounded reports of thrombocytopenia, hemolytic anemia, leukopenia, granulocytopenia, anaphylaxis, hypersensitivity syndrome, severe skin reactions (including urticaria, angioedema, and erythema multiforme), liver abnormalities, renal failure, and death (see section I.B., comment 4). Reports in the literature have identified quinine sulfate (in doses typically recommended for the treatment and/or prevention of nocturnal leg muscle cramps) as the causative agent in cases of photosensitive dermatitis (Refs. 2, 3, and 4), psychosis (Ref. 5), disseminated intravascular coagulation (Ref. 6), and hemolytic uremic syndrome (Ref. 7).

The agency agrees that quinine may interact with several other drugs (Refs. 8, 9, and 10), including those mentioned by the comment. This information could be included in the labeling of OTC quinine drug products. However, the agency does not need to make a decision on such drug interaction precautions because no ingredients for treating and/or preventing nocturnal leg muscle cramps are currently generally recognized as safe and effective for inclusion in an OTC drug monograph.

Cinchonism is a cluster of symptoms of varying severity that includes: Tinnitus, dizziness, disorientation, nausea, visual changes, auditory deficits, and (at higher doses) cardiac arrhythmias. Cinchonism is dose related. The clinical studies discussed in section I.B., comment 6 demonstrate that adverse events typical of quinine toxicity (in some cases, sufficiently severe to lead to discontinuation of the drug) occur in some people at doses generally recommended for the treatment and/or prevention of nocturnal leg muscle cramps. These studies indicate that some people who self-medicate with quinine to treat and/or prevent nocturnal leg muscle cramps at doses recommended in product labeling will experience these quinine-related adverse events. In addition, people taking quinine remain at risk of developing hypersensitivity to the drug and experiencing a serious, life threatening, or fatal reaction as a consequence. Even if quinine were effective for the treatment and/or prevention of nocturnal leg muscle cramps, this risk would require that a prescribing physician participate in the decision to use the drug, by assuring the diagnosis, considering alternative treatment options, evaluating concurrent medical problems and medications, and monitoring patient safety throughout treatment.

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8. Several comments downplayed the potential for hypersensitivity reactions to quinine, particularly quinine-induced immunologic thrombocytopenia, arguing that the continued OTC marketing of quinine for the treatment and/or prevention of nocturnal leg muscle cramps should not be stopped because of this potential consequence of its use. One comment (Ref. 1) submitted an expert review of drug-induced immunologic thrombocytopenia (DIITP), which stated that DIITP has been reported with over 100 drugs. Gold salts, heparin, and the cinchona alkaloids are the drugs most commonly associated with this condition. According to the expert review supplied by the comment, there is no known information about the dose of quinine required to induce DIITP sensitivity. DIITP occurs more frequently in people over 50 years old, possibly because of their greater exposure to drugs. It typically is characterized by a warm sensation, followed by a chill. Bleeding episodes, manifested by petechiae (pinpoint red spots, caused by intradermal or submucosal hemorrhage), purpura (purplish or brownish red discolorations visible through the skin, caused by hemorrhage into the tissues), hemorrhagic lesions of the oral mucosa, and occasionally hemorrhage of the gastrointestinal and urinary tracts may occur 6 to 12 hours after drug exposure in individuals who develop severe thrombocytopenia. Intracerebral hemorrhage and lethal intrapulmonary hemorrhage have been reported. Primary treatment is to discontinue the offending drug; bleeding usually subsides in 3 to 4 days. Other interventions (including glucocorticoid therapy and platelet transfusions) have not been shown to be beneficial.

Another comment argued that many drugs and additives to foods have the propensity to induce a variety of adverse reactions (Ref. 2). The comment stated that the prevalence of hypersensitivity to tartrazine (FD&C Yellow No. 5), a widely used dye, has been estimated to be about 1 in 10,000 in the general population. The comment pointed out that when tartrazine is used in OTC drug products, a labeling statement is required to inform consumers that the product contains tartrazine and that it may cause allergic-type reactions. The comment stated that this was "a clear precedent for the OTC drug use of products that have potential for rare hypersensitivity." The comment also described aspirin sensitivity as widespread and emphasized that a brief warning statement in labeling regarding use by people with asthma or aspirin sensitivity is deemed adequate to ensure safe OTC use.

The agency finds that the information in the first comment indicates that

quinine is one of the drugs most frequently associated with DIITP. While other drugs (e.g., gold salts and heparin) cause DIITP, quinine is the only drug highly associated with DIITP that is available OTC.

In March 1985, the Department of Health and Human Services established an Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents (the Committee) to evaluate data relevant to allergic-type reactions in humans that were associated with food constituents. The Committee concluded that tartrazine may cause mild cases of urticaria (hives) in a small subset of the population (usually not requiring medical intervention). The Committee found no evidence that the color additive constitutes a hazard to the general public when used in food at its current levels. Prior to the Committee's findings, the agency had decided that labeling provides an adequate safeguard for those sensitive to tartrazine. (See the **Federal Register** of February 4, 1977 (42 FR 6835) and June 26, 1979 (44 FR 37212).) The agency requires the label of OTC and prescription drug products containing tartrazine intended for oral, nasal, rectal, or vaginal use to specifically declare the presence of tartrazine by listing the color additive using the names "FD&C Yellow No. 5" and "tartrazine." (See 21 CFR 74.1705(c)(2).) In addition to this label statement, prescription drug products for these uses must also include in their labeling the warning statement "This product contains FD&C Yellow No. 5 (tartrazine) which may cause allergic-type reactions (including bronchial asthma) in certain susceptible persons. Although the overall incidence of FD&C Yellow No. 5 (tartrazine) sensitivity in the general population is low, it is frequently seen in patients who also have aspirin hypersensitivity."

There are a number of differences between hypersensitivity reactions to tartrazine and aspirin and hypersensitivity reactions to quinine. In a review of allergic reactions to drug additives (Ref. 3), Simon stated that reactions to tartrazine "if they occur at all, are indeed quite rare for the asthmatic population, even for the aspirin-sensitive subpopulation." Simon further reported that no positive responses were found after 125 double-blind, placebo-controlled tartrazine challenges (with at least 25 mg) in an aspirin-sensitive asthmatic population. Simon also reviewed adverse reactions to food additives (Ref. 4) and stated that, although tartrazine is the food additive most frequently associated with hypersensitivity reactions, "tartrazine has been confirmed to be at best only occasionally associated with flares of urticaria or asthma." Reports of these relatively mild tartrazine reactions, however, are in contrast to the serious reports for quinine, which involve life threatening and fatal hypersensitivity reactions.

Virchow et al. (Ref. 5) evaluated sensitivity to tartrazine in 156 Europeans with confirmed aspirin-induced asthma. Oral challenges were performed with increasing doses. All positive challenges were repeated under double-blind conditions. Only four subjects had positive reactions; none were serious. The incidence of tartrazine cross sensitivity to aspirin in this European population was 2.6 percent. In a similar study, Morales et al. (Ref. 6) conducted 141 challenge tests on 47 subjects with asthma associated with intolerance to analgesics, using tartrazine doses of 5, 25, 50, 100, and 200 mg and a placebo. Only five tests were positive in four of the subjects; repeat tests were negative in three of the four subjects. The authors stated that clinical instability in these subjects may be the cause of some respiratory symptoms attributed to tartrazine and that the practice of recommending color free diets should be reserved for cases in which a positive challenge test has been obtained on at least two occasions. This experience suggests that: (1) The incidence of tartrazine sensitivity may be overestimated, and (2) the nature of reactions to tartrazine is sufficiently benign to permit multiple rechallenges to confirm intolerance. Rechallenge of quinine-sensitive individuals, in contrast, is contraindicated because the reactions are serious, life threatening, or fatal, even under controlled conditions.

Safford (Ref. 7) was unable to detect antibody formation with tartrazine and its metabolites in animal studies, suggesting that an immunologic response is not involved in tartrazine sensitivity. Hypersensitivity to quinine, in contrast, is mediated by an immunologic mechanism.

Aspirin sensitivity is relatively common compared to quinine sensitivity, but is more manageable and usually predictable. In a review of aspirin sensitivity, Settipane (Ref. 8) described a number of factors that are predictive of subjects in whom intolerance is most likely to occur. Sensitivity is seen in 23 to 28 percent of people with chronic urticaria, 14 to 23 percent of people with nasal polyps, and up to 19 percent of people with asthma. These people are likely to be under a doctor's care and to have been told to avoid aspirin products. Genton et al. (Ref. 9) studied the usefulness of oral provocation tests to aspirin and food additives in 34 subjects with asthma or chronic urticaria, concluding that such investigations are safe and useful in managing such subjects by identifying intolerance to various compounds. As with tartrazine, hypersensitivity to aspirin does not appear to be mediated by an immunologic response (Ref. 8). In contrast to aspirin, there are no predictive factors for quinine hypersensitivity and, as noted above, in vivo rechallenge is contraindicated.

Sensitivity to aspirin (Ref. 8) and tartrazine (Ref. 10) is a problem that is manageable. The sensitivity generally results in urticarial or bronchospastic symptoms that are responsive to medical treatment. Anaphylaxis has been reported with aspirin, but is extremely rare given the extensive use of products containing aspirin. In a retrospective study of anaphylaxis occurring outside of hospitals in a hospital catchment area in Denmark over a 13-year period, the rate of anaphylaxis caused by aspirin was 0.48 cases per 100,000 inhabitants (Ref. 11). Sensitivity to quinine, in contrast to aspirin or tartrazine, affects a number of body systems and may be serious, manifested as urticaria/angioedema, hepatic injury, renal failure, serious dermatologic conditions, serious hematologic events, and death (Ref. 12) (also see section I.B., comment 6). Three sources estimate the incidence of quinine-induced immunologic thrombocytopenia to be in the range of about 1:1,000 to 1:3,000 (see section I.B., comment 9).

FDA's spontaneous reporting system contains 110 case reports involving quinine for the period from 1969 through 1990. Sixty-nine (approximately 63 percent) of these reports represent possible hypersensitivity reactions, including 22 reports of thrombocytopenia (57 of these cases [approximately 83 percent] involved quinine products and/or quinine dosages typically used in the treatment and/or prevention of nocturnal leg muscle cramps). Of the eight deaths that occurred among the reported hypersensitivity reactions, medical records and autopsy findings were sufficiently complete in two of these cases (both involving OTC quinine products indicated for the treatment of leg muscle cramps) to implicate quinine-induced thrombocytopenia as precipitating fatal hemorrhages in each case. Underreporting of such reactions into the agency's spontaneous reporting system is believed to be very substantial for OTC drug products. This may be due to physicians (the principal reporters to the spontaneous reporting system) not

becoming aware of reactions to OTC drugs, and because manufacturers and distributors are not generally required to transmit reports of serious adverse reactions involving OTC drugs to FDA.

The agency concludes that the severity of quinine hypersensitivity reactions, even in their first occurrence, and the inability to identify predisposing factors to this occurrence create a risk clearly different from that presented by tartrazine or aspirin. The agency does not consider it likely that a warning statement in quinine product labeling would be of significant value because it is impossible to prospectively identify the groups at risk (see section I.B., comment 10).

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9. Two comments provided estimates of the incidence of quinine-induced immunologic thrombocytopenia (QIITP). Lavy (Ref. 1) presented several estimates, each based on different assumptions and information. For one estimate, Lavy noted that four of six hypersensitivity reactions reported to FDA in 1987 were cases of thrombocytopenia. Lavy converted the total sales of quinine drug products for 1987 by dosage unit to "total number of days of therapy sold" by dividing the number of tablets and capsules sold by the dose per day described in product labeling. Lavy assumed that quinine was taken for leg cramps approximately one quarter of the year by each subject. By dividing the "total days of therapy purchased" by the "total days used per person," Lavy estimated the size of the population exposed to drug products containing quinine in 1987 to be 1.66 x 106, and calculated the incidence of QIITP to be 1 case per 415,000 people, based upon 4 cases reported to FDA that year. Lavy did not try to correct for underreporting.

Using another approach, Lavy reported that quinine has been estimated to be the causative agent in approximately 10 percent of all drug-induced immunologic thrombocytopenia reports. He noted that secondary thrombocytopenia was the principal diagnosis in approximately 4,000 discharges in the 1987 National Hospital Discharge Survey. Assuming that 10 percent of these thrombocytopenia cases were drug-induced and 10 percent of drug-induced immunologic thrombocytopenia cases are related to quinine, 40 cases could be attributed to quinine. Assuming the population exposed to drug products containing quinine in 1987 was 1.66 x 106 (as calculated above), Lavy calculated the incidence of QIITP to be 1:41,500. Lavy cited a third estimate of the incidence of QIITP based on information from Danielsen's report on drug-induced blood disorders among admissions at the Group Health Cooperative of Puget Sound (Ref. 2). In this retrospective study, 6 cases of thrombocytopenia related to quinine or quinidine among 5,089 subjects were reported for an apparent incidence of 1 case per 848 subjects taking 1 or the other of the 2 drugs.

Another comment (Ref. 3) estimated the incidence of QIITP from ingestion of drug products to be 1:3,300 per year. The comment based its calculations on the number of cases of documented quinine-induced thrombocytopenia at the Blood Center of Southeastern Wisconsin over a 10-year period. In making this estimate, it was assumed that at least half of all cases occurring in this population would have been referred to the laboratory for confirmation of diagnosis.

The agency notes that the estimates of the incidence of thrombocytopenic reactions to drug products containing quinine range from more than 1 in 1,000 (for quinine and quinidine considered together) to less than 1 in 400,000. This wide range suggests that a precise estimate will be hard to obtain. It is difficult to conclude, however, that the first estimate proposed by Lavy is correct. The number of events used by Lavy is the number reported to FDA in 1987. While no one knows the extent of underreporting, it is believed to be very substantial. For example, if even a 1 percent rate is assumed, this would translate, using Lavy's other figures, to about 1 in 4,000 people. The exposure estimate could also be considerably in error. Lavy assumed the drug was used for one-quarter of the year by each person. If, in fact, it was used for one half of the year, the number of exposed people would be half that proposed and the rate of drug-induced immunologic thrombocytopenia would be double that calculated.

The incidence calculated based on the National Hospital Discharge Survey (Ref. 1) employed the estimate of population discussed above and assumed 1 percent of the diagnoses of secondary thrombocytopenia were attributable to quinine. There is no way to know the accuracy of this estimate; if it were higher, even by a factor of 5, the estimated rate would be above 1 in 10,000, a substantial rate.

Probably the most credible of Lavy's estimates is the Puget Sound-based estimate (Ref. 2), because it is based on hospital diagnoses and well-documented exposure. The estimate of the incidence of QIITP based on the number of documented cases occurring in the population served by the Blood Center of Southeastern Wisconsin over a 10-year period (Ref. 3) also is based on relatively few assumptions and appears reliable. The only assumption in this calculation was that twice as many events occurred as were reported to the laboratory. The estimates from these two sources, 1:848 (Puget Sound) and 1:3,300 (Southeastern Wisconsin) are similar to the estimate of 1:1,000 cited by Mitchell (Ref. 4). These three sources provide a reasonably small range for the incidence of QIITP that can be expected, about 1:1,000 to 1:3,000.

Therefore, while the agency believes that a precise estimate of the incidence of QIITP will be difficult to obtain, credible estimates from three sources (Refs. 2, 3, and 4) do not support the assertion that QIITP is a rare event.

**References**

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10. Three comments contended that warnings in product labeling could adequately inform and protect consumers from the well-known side effects of quinine, including idiosyncratic reactions. One comment stated that warnings recommended by the Miscellaneous Internal Panel (47 FR 43562 at 43564), including those concerning idiosyncratic reactions, have been incorporated into the labeling of currently marketed products. Another comment stated that careful warning language in its product labeling helps to further protect consumers by informing them of the possibility of untoward, idiosyncratic reactions. This labeling states: "Discontinue use and consult your doctor immediately if swelling, bruising, skin rash, skin discoloration or bleeding occurs. These symptoms may indicate a serious condition. Discontinue use if ringing in the ears, deafness, diarrhea, nausea or visual disturbances occur * * * Do not take if * * * allergic or sensitive to quinine or under 12 years of age." A third comment, citing a report by Lavy (Ref. 1), stated that serious adverse effects occur at a frequency probably less than 1 in 40,000 people (see section I.A., comment 9), the clinical course is only rarely complicated, and that labeling can clearly and concisely warn "* * * regarding the more common yet low frequency side effects, which are generally treated simply by discontinuing use."

In the tentative final monograph (50 FR 46588 at 46592) the agency proposed the following warning in § 343.150(c) for OTC drug products containing quinine: "Discontinue use if ringing in the ears, deafness, skin rash, or visual disturbances occur. Do not take if pregnant, sensitive to quinine, or under 12 years of age." The agency proposed this labeling in the event that data were submitted that resulted in the inclusion of quinine in a monograph in the final rule. While proposed, this labeling was not required at that time.

The agency has reviewed the warning information currently appearing on OTC quinine products marketed for the treatment and/or prevention of leg muscle cramps. The language varies slightly between products, but the information provided is similar. In general, labeling warns patients to discontinue taking the drug should any of a number of listed events occur. However, the labeling differs in the events listed and in recommending when a physician should be contacted.

There are several factors that argue against the sufficiency of label warnings to protect consumers from serious adverse events related to quinine. The frequency of these reactions is probably greater than assumed by the comments (see section I.B., comment 9). Many of the adverse advents are unpredictable. For example, thrombocytopenia may occur after 1 week of exposure or after months or years of quinine administration. Further, there may be no characteristic that would predict an adverse event in the person using the product. The agency believes that a physician could help people using this drug appreciate the nature and frequency of the risk and help in the consideration whether that risk is acceptable. The physician could also advise about the signs of thrombocytopenia, such as petechiae (pinpoint, nonraised, round, purplish red spots) and purpura (small hemorrhage), perhaps allowing identification of this condition before a significant hemorrhage occurred. A number of the adverse reaction reports note the occurrence of a similar prior event related to previous ingestion of quinine in which neither the user nor the physician recognized the relationship of the illness to quinine ingestion. Use of quinine under a physician's prescription, with appropriate emphasis on warning signs, may make timely recognition easier.

Although drug-induced immunologic thrombocytopenia may be the best studied idiosyncratic reaction caused by quinine (Ref. 2), quinine has also been reported to have been associated with a number of other hypersensitivity reactions and pharmacologic effects. Lavy (Ref. 1) notes that these include "the possibility of decreased digoxin clearance, increased half-life of quinine when given concurrently with cimetidine, pseudo-allergic reactions in aspirin-sensitive patients, drug fever, nonspecific granulomatous hepatitis, asthma, hemolytic anemia, inhibition of tolbutamide metabolism, hypoprothrombinemia, hemolytic anemia in glucose-6-phosphate dehydrogenase (G–6–PD) deficient patients, etc." Cooper and Bunn (Ref. 3) reported that G-6-PD-deficient individuals (i.e., those variants susceptible to hemolytic anemia from quinine) are relatively common among eastern Mediterranean and Chinese people. Quinine may also interact with several other drugs (see section I.B., comment 7). Furthermore, the possible pharmacologic effects may have particular significance for the elderly who may be taking concomitant medications that either provoke muscle cramps or adversely interact with quinine. Altered pharmacokinetics with age also result in a longer half-life of quinine in older people, which suggests that the frequency and severity of adverse effects may be greater in the elderly (Ref. 4) (also see section I.B., comment 6). The foregoing possible additional adverse reactions, including those related to ethnicity, age, and concurrent drug therapy, are not addressed by the labeling of the comment's product and would generally be difficult to address in OTC drug product labeling.

It should also be noted that the number of reports of serious adverse reactions submitted to FDA's spontaneous reporting system, including those resulting in hospitalization and death, has been increasing over the past several years in spite of the industry's revision of labeling to incorporate the warnings suggested by the Miscellaneous Internal Panel in 1982. There has been an increasing number of reports per year since 1986, and 56 of 105 reports (approximately 53 percent) have been received by FDA since 1988. (See section I.B., comment 4.)

The agency concludes there is insufficient evidence that warnings in product labeling could adequately inform and protect consumers from the well-known side effects of quinine, including idiosyncratic reactions. This conclusion is based primarily on the severity of hypersensitivity reactions to drug products that contain quinine and the inability to identify predisposing factors to these reactions, the frequency of such reactions, and the relationship of quinine-related adverse events to factors such as ethnicity, age, and concurrent drug therapy.

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11. Two comments objected to the agency's discussion on the safety of vitamin E (50 FR 46588 at 46591), contending that a considerable body of data demonstrating safety in humans had been excluded from the agency's evaluation. The comments primarily objected to the agency's emphasis on the observations of one physician as an expert on vitamin E because they considered the data referred to by this individual to be anecdotal, uncontrolled, and largely subjective. The comments provided a literature review and other data (Refs. 1, 2, and 3) to support the safe use of vitamin E in humans.

Another comment disagreed with the agency's Category III classification of vitamin E both individually and in combination with quinine sulfate for the treatment and prevention of nocturnal leg muscle cramps, contending that adequate information already existed to support the safety of these ingredients (alone or in combination). The comment included the results of two new clinical studies (Refs. 4 and 5) comparing vitamin E, quinine sulfate, a combination product containing vitamin E and quinine sulfate, and placebo to support the safe use of the individual ingredients as well as the combination of these ingredients for this indication. In both studies, subjects received a daily dose of 1,600 I.U. of vitamin E, either alone or in combination with quinine sulfate.

One additional comment included the results of a third new clinical study comparing vitamin E, quinine sulfate, a combination product containing vitamin E and quinine sulfate, and placebo (Ref. 6). Some safety information on vitamin E can be derived from this study.

In the tentative final monograph, the agency classified vitamin E in Category III for the treatment and prevention of nocturnal leg muscle cramps, stating that a safe and effective OTC dosage had not been established for this use (50 FR 46588 at 46591). The agency evaluated all of the data that had been submitted to this rulemaking proceeding but acknowledges that these data were not the total body of information that has been published on vitamin E. The agency did point out that the paper by Roberts (Ref. 7) raised some questions about a safe dose of OTC vitamin E.

The agency has reviewed the additional data and information that have been submitted and determined that sufficient evidence has been presented to support the safety of vitamin E for the treatment and/or prevention of nocturnal leg muscle cramps. However, the evidence is inadequate to support the effectiveness of vitamin E for this use (see section I.C., comment 13).

Farrell and Bieri (Ref. 2) evaluated potential toxic and/or beneficial effects of vitamin E intake. Twenty-eight adults who had been self-administering 100 to 800 I.U. of vitamin E daily for an average of 3 years were studied. A review of the subjects' past medical histories did not reveal any apparent gross evidence of toxicity from vitamin E intake. The highest plasma alpha-tocopherol concentrations in the vitamin E subjects were two times the upper limit of normal, as determined in control subjects. A broad range of laboratory tests were performed to assess toxic effects on various organ systems. No disturbance in liver, kidney, muscle, thyroid gland, erythrocytes, leukocytes, coagulation parameters, or blood glucose was found.

Salkeld (Ref. 1) reviewed over 9,000 cases in which daily doses of up to 3,000 I.U. of vitamin E were taken for up to 11 years (and 55,000 I.U. daily for 5 months in a few subjects). In 1,014 cases with vitamin E intake from 200 I.U. up to 3,000 I.U. daily for up to 11 years, it was stated that no side effects were observed. In another 8,241 cases with similar intake and duration, there was no mention of side effects. In other trials, 82 of 813 subjects complained of one or more side effects. The reported effects included dermatitis, pruritus ani, acne, cheilosis, fatigue and weakness, gastrointestinal symptoms, prostatic obstruction, tachycardia, and vasodilation. Thus, in a total of 10,068 cases, Salkeld found a 0.8 percent overall incidence of side effects. The Advisory Review Panel on OTC Vitamin, Mineral, and Hematinic Drug Products relied in part on this same literature review by Salkeld in stating its conclusion "that vitamin E is safe" (March 16, 1979, 44 FR 16126 at 16172). The Advisory Review Panel on OTC Antimicrobial (II) Drug Products, in the advance notice of proposed rulemaking for OTC topical acne drug products (March 23, 1982, 47 FR 12430), mentioned that there are no notable pharmacological or toxicological effects of oral vitamin E and that numerous experiments indicate that high dietary intakes of vitamin E (up to 800 I.U. daily for up to 3 years) are apparently without toxic side effects (47 FR 12462).

One of the new clinical studies submitted includes the results of laboratory tests performed in 24 patients to evaluate the effect of the product on various organ systems (Ref. 4). Tests were performed at baseline and at the end of each 1-week treatment period. No abnormal results in liver, kidney, leukocytes, erythrocytes, platelets, electrolytes, or blood glucose were found in any of the patients at any time. In this study vitamin E was used only in a combination product, and each subject had a daily intake of 1,600 I.U. of vitamin E. However, the combination product was only taken during 1 week of the study. Therefore, the laboratory data do not provide any useful information on the long-term effects of vitamin E.

The second new clinical study (Ref. 5) was a four-period crossover study in which each subject received 1,600 I.U. of vitamin E daily (either singly or in a combination product) for 5 days during two of the four treatment periods of the study. Although no laboratory tests were performed, the subjects were asked to report any adverse reactions at the end of each treatment period. Twenty-seven adverse reactions were reported by 19 subjects out of 205 individuals completing all phases of the study. Six of these adverse reactions were from subjects who received vitamin E singly. Complaints included: Abdominal cramps, nausea, loose bowels, and headache. The most commonly occurring complaint was gastrointestinal disturbance (nausea, flatulence, or diarrhea) of a transient nature. These reactions are consistent with those previously reported in other studies; however, the investigators considered the reactions as not related or probably not related to the study drug.

In the third new clinical study (Ref. 6), vitamin E (1,600 I.U. daily for 2 weeks) was compared with placebo, quinine sulfate, and a combination of quinine sulfate and vitamin E for the treatment and/or prevention of nocturnal leg muscle cramps. Details of this multicenter, parallel-design study are described in section I.C., comment 12. Vitamin E alone was administered to 137 subjects. Headache was the most frequently reported adverse event, occurring in 23 subjects (16.8 percent). However, a similar rate of headache (21 percent) was reported in subjects taking placebo. The investigators described only six of these events as possibly related to the study medication. Other adverse events described by the investigators as possibly related to

vitamin E included three of four reports of nausea, two of three reports of myalgia, and one of three reports of local edema. Thus, daily doses of 1,600 I.U. of vitamin E were well tolerated in this study.

Bendich and Machlin (Ref. 8) reviewed six double-blind studies involving vitamin E at doses as high as 3,200 I.U. daily for up to 6 months. Very few adverse effects were noted, and no specific side effect was consistently observed in all the studies. In one study, 202 college students received 600 I.U. of vitamin E or placebo daily for 28 days in a randomized, double-blind trial (Ref. 9). No effects on prothrombin time, total blood leukocyte count, or serum creatine phosphokinase activity were evident. In a randomized, double-blind, placebo-controlled study, 30 healthy adults were given 800 I.U. of vitamin E or placebo daily for 16 weeks. There were no significant differences in effects on plasma lipids between the vitamin E and placebo groups (Ref. 10). No side effects were observed in a double-blind, crossover study of 48 subjects who received 1,600 I.U. of vitamin E or placebo daily for a period of 6 months (Ref. 11). There were no reports of significant side effects, weakness, fatigue, or thrombophlebitis in a double-blind, crossover study in which 2,000 I.U. of vitamin E or placebo was given daily to 25 adult onset-diabetic subjects for a period of 6 weeks (Ref. 12). Thyroid hormone levels were found to be identical for both the treatment and placebo periods. Hale et al. (Ref. 13) examined the incidence of various clinical disorders and measured a number of laboratory variables in 369 subjects who used vitamin E supplements and 1,861 subjects who did not. All subjects were over age 65. Use of vitamin E appeared to have little influence on clinical disorders or hematologic or biochemical parameters. Only the serum glutamic oxaloacetic transaminase was higher in vitamin E users. However, the values were still within the accepted normal range. There were no significant differences between users and nonusers in the prevalence of hypertension, vaginal bleeding, frequent headache, dizziness, recurrent diarrhea, diabetus mellitus, lightheaded-ness, or thyroid disorders.

Roberts (Ref. 7) raised concerns about an increased incidence of thrombophlebitis associated with excessive vitamin E intake. In over 10 years of practice, Roberts encountered more than 80 patients with problems that he attributed to self-medication with high doses of vitamin E (greater than 800 I.U. daily). He suggested that vitamin E may encourage thrombosis in patients with a predisposing condition. Symptoms of thrombophlebitis were said to have abated upon cessation of vitamin E therapy. Conventional treatment for thrombophlebitis (e.g., bed rest, local heat) was administered along with the discontinuation of vitamin E therapy. Thus, it is difficult to assess which action was responsible for the improvement. In addition, no controlled studies or concurrent references were included in support of his conclusions.

Fitzgerald and Brash (Ref. 14) stated that vitamin E at 1,600 I.U. a day in humans decreases platelet thromboxane production which could consequently reduce the potential for thrombosis formation. In addition, they noted that associations between thrombophlebitis and vitamin E use have not been reported by other authors.

Several authors (Refs. 2, 9, and 15) have reported that oral intake of high doses of vitamin E has not produced blood coagulation abnormalities in normal humans. However, in individuals deficient in vitamin K (caused by malabsorption, diet, or anticoagulant therapy), large doses of vitamin E can exacerbate coagulation defects. Therefore, high levels of supplemental vitamin E may be contraindicated in such conditions (Ref. 8).

Based on the discussion above, the agency concludes that sufficient evidence exists to support the safety of vitamin E at the daily doses that have been commonly used for the treatment and/or prevention of nocturnal leg muscle cramps.

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*C. Comments on the Effectiveness of Nocturnal Leg Muscle Cramp Ingredients*

12. One comment disagreed with the agency's Category III classification of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps on the basis of a lack of adequate clinical data demonstrating the effectiveness of quinine sulfate for this indication (50 FR 46588 at 46590). The comment contended that there is sufficient evidence of quinine's effectiveness for this indication at present to warrant classifying it in Category I. The comment subsequently submitted the results of two clinical studies (Refs. 1 and 2) comparing quinine sulfate, vitamin E, a combination product containing quinine sulfate and vitamin E, and placebo for the treatment and prevention of nocturnal leg muscle cramps to support the effectiveness of the individual ingredients (quinine sulfate and vitamin

E) as well as the combination of these ingredients for this indication. Another comment provided the results of three clinical studies (Refs. 3, 4, and 5) that it felt addressed the effectiveness issues raised by the agency in the tentative final monograph (50 FR 46590). This comment requested an oral hearing if the submitted data were not found adequate to upgrade quinine sulfate to Category I. In addition, in response to a citizen petition, one comment included the results of a clinical study intended to demonstrate the efficacy of a combination product containing quinine sulfate and vitamin E (Ref. 6).

In the tentative final monograph, the agency concluded, on the basis of its review of the new data submitted and the studies and information discussed by the Internal Analgesic and Miscellaneous Internal Panels, that quinine sulfate for use in OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps should be classified in Category III. The agency stated that adequate clinical data are necessary to support the reclassification of quinine from Category III to Category I and that any such studies should address the following safety and effectiveness issues (50 FR 46588 at 46590):

(1) Is quinine effective in treating and/or preventing nocturnal leg muscle cramps in low daily doses (e.g., 200 to 325 mg) over short periods of time (e.g., 7 days or less)?

(2) If short-term quinine treatment with low doses is not significantly effective in reducing recurrent episodes of nocturnal leg muscle cramps, must such medication be taken over extended periods of time to obtain relief? If yes, how long a period of time?

(3) What adverse effects are experienced by subjects exposed to effective doses of quinine over an effective course of therapy?

The agency has reviewed the additional clinical data that have been submitted and determined that they are not adequate to support the reclassification of quinine sulfate to Category I for this use. Three studies (Refs. 3, 4, and 5) compared quinine to placebo. In one study (Ref. 3), 75 subjects were enrolled in a double-blind, randomized, placebo-controlled, crossover study that was conducted over a 10-week period in five 2-week intervals. Subjects with a history of at least two cramps per week for at least 3 months were included in this study and randomized to one of two treatment groups (group I or II). The initial 2-week period was a baseline period and patients who failed to have at least two cramps per week were dropped from the study. Subjects who had a sufficient number of cramps during the baseline period were either given the placebo (group I) or 325 mg of quinine sulfate per night (group II) for a period of 2 weeks. No treatment was given for the next 2-week period and in the fourth 2-week period subjects crossed over to the alternate treatment. A final 2-week period of no treatment followed. Subjects were issued weekly case report forms upon which they were instructed to record the number of cramps experienced per night, the time of the cramp, and the severity of the cramp. Subjects were also asked to rate the effectiveness of the medication just completed at weeks 4 and 8 of the study. According to the protocol, subjects were assigned to the treatment sequence, on the basis of a predetermined randomization schedule, prior to entering the baseline period. Therefore, the removal of subjects from the study in the first 2 weeks for not having enough events may have biased the study.

In the statistical analysis of the study data, three efficacy variables were evaluated: The mean frequency of leg cramps (per night), the mean severity of leg cramps per night, and the total number of nights per week that leg cramps occurred. The last variable (total number of nights per week that leg cramps occurred) appears to be constructed from the primary data because no such variable is listed on the weekly case report forms from which these variables are derived. The subjects' overall assessment of the effectiveness of the drug was collected but not analyzed.

Sixty-two of the 75 subjects enrolled in the study were included in the data analysis. Of the 13 subjects found to be unevaluable, 8 withdrew from the study on their own accord. No specific reasons for these withdrawals were given, but it is stated in the study report that they were unrelated to the treatment. The remaining five subjects were dropped for various medical reasons and noncompliance with the protocol. No "intent-to-treat" analysis was performed.

A number of analyses were carried out. Two of the analyses treated the unblinded baseline and washout periods as if they were treatment periods. This type of analysis is incorrect for a crossover trial. The relevant comparisons that should be made are between the treatments in the double-blind periods, possibly with adjustments for baseline, provided there are no major changes in baseline values for each period.

When Patel's joint test for equal carryover and equal pretreatment severity (Ref. 7) is applied to the data, however, significant differences are seen in pretreatment severity before the second period. Analysis of the second period is thus compromised; therefore, analysis should be limited to the first treatment period (weeks 3 and 4). This comparison does not show a significant advantage for quinine sulfate over placebo for any of the effectiveness variables.

Another clinical study (Ref. 4) used the same study design as the study discussed above except that the dose of quinine sulfate was 260 mg/night, not the 325 mg/night used in the first study. In addition, five efficacy variables were analyzed: Frequency, severity, and duration of leg cramps, and induction and quality of sleep.

Although the predetermined randomization chart submitted for this study provided for enrollment of 74 subjects, 84 subjects entered the study. No explanation for entry of the additional 10 subjects was provided. As in the first study, randomization to treatment sequence occurred at the time of entry into the baseline period; thus, subsequent removal of subjects prior to the first double-blind treatment period may also have introduced bias into this study. Of the 84 subjects entered at baseline, 69 (34 assigned to group I and 35 to group II) entered the double- blind treatment phase.

The study concluded that significant differences at the 5-percent level exist between quinine sulfate and placebo for three of the five variables: Frequency of cramps, induction of sleep, and quality of sleep. However, no documentation of any statistical analysis supporting these claims was provided.

The statistical report that accompanied the study addressed the question of comparing the effectiveness of quinine sulfate and placebo with a multivariate analysis of covariance which compared the vector of efficacy variables over four observation periods (two treatment periods plus two washout periods with the initial baseline value as a covariate). The conclusion of the analysis was that the treatment effect was not significant ($p = 0.106$). Univariate analyses of covariance comparing these four observation periods were referred to in the statistical report, but no p-values for treatment effect were provided (although a significant order by treatment interaction was reported). Also included in the statistical analyses of the study were comparisons of the four observation periods separately by sequence (quinine sulfate-placebo and

placebo-quinine sulfate), which included baseline-adjusted means and comparisons between periods using Duncan's Multiple Range Test. These comparisons showed that significant differences were demonstrated between quinine and placebo only for the placebo-quinine sulfate sequence (group II), and only for three variables: Frequency of cramps, quality of sleep, and induction of sleep. However, the adjusted means for the quinine sulfate-placebo sequence (group I) favored placebo over quinine sulfate for all five efficacy variables. In addition, as for the first study, the appropriate statistical analysis for this type of study was not done. The hypothesis of equal carryover effect was not tested and not rejected before any of the other statistical tests for treatment effect were performed. The results of this study are not adequate to support the effectiveness of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps.

The study by Jones and Castleden (Ref. 5) also does not provide adequate evidence of quinine sulfate's effectiveness for this indication. The study was a double-blind crossover study of nine patients with four 2-week periods of observation (a run-in period and a washout period in addition to two treatment periods of placebo or quinine sulfate 300 mg/day). The same five efficacy values as in the second study above were evaluated: Frequency, severity, and duration of leg cramps, and induction and quality of sleep. No raw data were included to substantiate any of the statistical claims made by the authors; nor was a protocol included in the article.

Of the five primary efficacy variables, only severity of cramps was claimed to show a significant difference between quinine sulfate and placebo ($p < 0.025$), although an analysis of frequency of cramps after 2 a.m. was also claimed to be significant ($p < 0.025$). There was no indication that the time period after 2 a.m. was identified in the protocol as defining a primary endpoint; thus, this is assumed to be a post-hoc analysis done after reviewing the data. In general, the isolated severity finding is not convincing on its face. In addition, the published article did not provide sufficient information to permit an independent analysis of the data. For these reasons, the study does not provide evidence that quinine sulfate is an effective treatment for nocturnal leg muscle cramps.

Three studies (Refs. 1, 2, and 6) were submitted to support the effectiveness of quinine sulfate and vitamin E individually and in combination for the treatment and/or prevention of nocturnal leg muscle cramps. The Freiburg study (Ref. 1) was a 5-week, double-blind, randomized, crossover study in 24 subjects. All subjects received placebo during week 1 (baseline), week 3, and week 5. Subjects in group I received quinine in week 2 and the combination of quinine and vitamin E in week 4, while subjects in group II were given the combination product in week 2 and quinine in week 4. A statistically significant difference in frequency of attacks between the combination product and quinine sulfate was reported, but no difference in duration or severity of attack was found between these two active treatments. The report described an "obvious" improvement in frequency, duration, and severity of attacks between the placebo periods and both active treatments, but no statistical evidence or analysis to support this conclusion was provided. Moreover, the comparison of treatments and placebo did not involve randomized patient groups, nor was it blinded. Only the portion of the study comparing the combination product versus quinine was a randomized, double-blind trial. The study report did not include the study protocol, details of the statistical analysis conducted, or individual subject data. The model described in the summary of the data analysis did not properly separate carryover effect from treatment effect. The study provides no evidence from a controlled trial that quinine is effective for nocturnal leg muscle cramps.

The other study (Ref. 2) also employed a complicated randomized, four-period, crossover design. There were 205 subjects randomly assigned to one of four treatment groups: Quinine sulfate 260 mg/day, vitamin E 1,600 I.U./day, a combination of quinine and vitamin E, or placebo. The combination of quinine and vitamin E was reported as being statistically superior to both its components and placebo for six variables: Effect of cramps on falling asleep, nighttime awakening due to cramps, number of cramps, severity of cramps, subject global evaluation, and difficulty falling asleep due to cramps. The study also reported statistically significant positive findings on quinine sulfate versus placebo for the first five of these six variables. As in the Freiburg study, the model used in the statistical analysis does not properly separate the carryover effect from the treatment effect. Neither the data listings nor the results by period were provided. Therefore, the agency was unable to independently analyze the results of this study or to rely on the analysis provided as evidence that the reported results were attributable to drug treatment.

The third clinical study compared quinine sulfate, vitamin E, and a combination of quinine sulfate and vitamin E to placebo, for the treatment and/or prevention of nocturnal leg muscle cramps (Ref. 6). This study was a multicenter, randomized, block parallel-design with a single-blind, placebo, run-in period, followed by a 2-week, double-blind, randomized, treatment phase. Subjects who had at least one leg cramp per night for a minimum of 3 nights during the single-blind placebo week, and met all other selection criteria, were randomly assigned to one of the four double-blind treatment groups. Capsules, identical in appearance, contained either placebo, quinine sulfate 64.8 mg, vitamin E 400 I.U., or a combination of quinine sulfate 64.8 mg and vitamin E 400 I.U. Subjects were instructed to take two capsules following their evening meal, and two capsules before bedtime, which provided daily doses of 259.2 mg of quinine sulfate, 1,600 I.U. of vitamin E, or the combination thereof.

Efficacy endpoints identified in the protocol were: (1) Number of episodes of nocturnal leg cramps per week, (2) sleep disturbance due to nocturnal leg cramps, (3) severity of nocturnal leg cramps, and (4) duration of nocturnal leg cramps. However, none of the parameters was designated as a primary efficacy variable in the protocol. The protocol specified that efficacy would be analyzed by analysis of variance with repeated measures test, as well as other methods deemed appropriate. On the basis of an estimated 30 percent difference between the combination product and its components, assuming an alpha of 0.05 and statistical power of 70 percent, a sample size of 972 evaluable subjects was planned (243 subjects/group). Enrollment was suspended, however, and the data were analyzed after 498 evaluable subjects (51 percent) completed the study. Subjects were approximately evenly distributed among treatment groups.

In the final report, results were separately analyzed for weeks 1 and 2 of the double-blind treatment. The change from baseline scores obtained during the single-blind, placebo week was analyzed on seven variables for each of the treatment groups at days 7 and 14 using a two-way analysis of variance test with terms for treatment, center, and treatment by center interaction. The data were not analyzed using the analysis of variance with repeated measures test, as prospectively

stated in the protocol. The variables were: (1) Number of nights per week with leg cramps, (2) average number of leg cramps per night, (3) average severity of leg cramps per night, (4) average duration of leg cramps per night, (5) average number of leg cramps per night with sleeping difficulty, (6) average degree of difficulty getting to sleep per night, and (7) average number of nights per week awakened by leg cramps. The placebo group was compared with the remaining treatment groups with the least-significant-difference test using error mean square from the analysis of variance table. Within each treatment group, the amount of change from baseline for each efficacy parameter was compared for each double-blind treatment week using the Wilcoxon sign rank test. P-values of 0.05 or less were considered statistically significant.

Twelve centers initially participated in the study. Three centers were terminated because of low enrollment (less than four evaluable subjects in at least one treatment group). These low enrollment centers were combined in the analysis.

In the final report, the number of nights per week with leg cramps was declared the primary efficacy variable. During the baseline period, a mean of approximately 5 nights per week with leg cramps was recorded in all groups (placebo 4.72, combination 4.95, quinine sulfate 5.04, vitamin E 4.98). All groups improved during week 1 with a reduction in frequency to approximately 4 nights per week with cramps (placebo 4.04, combination 3.73, quinine sulfate 3.53, vitamin E 3.97). The greatest reductions were in subjects given quinine sulfate and the combination product and the difference in week 1 was found to be statistically significant compared to placebo for these treatment groups (p less than or equal to 0.04).

Statistically significant differences between quinine sulfate and placebo were reported in the first week of the study for four of the six remaining efficacy variables declared to be secondary parameters in the final report. Quinine was reported to be significantly better than placebo in reducing the average number of leg cramps per night, average severity of leg cramps per night, average duration of leg cramps per night, and average number of nights per week with sleeping difficulty. No statistically significant differences between any of the treatment groups for any variable were reported for the second week of the study. The comment concluded that quinine sulfate, alone and in combination with vitamin E, at a daily dose of approximately 260 mg was safe and effective in the short term (1-week) treatment of nocturnal leg muscle cramps.

The agency finds that there were a number of flaws in the analysis of this study. First, the primary endpoint (number of nights per week with leg cramps) appears to have been arbitrarily chosen after the study was completed. None of the efficacy variables was declared the primary endpoint in the protocol. Second, the study was of 2 week's duration, and there was no provision in the protocol for separate evaluation of the data from week 1 and week 2. Thus, there is no basis for the decision to analyze week 1 and week 2 separately in the absence of such an analysis declared prospectively in the protocol. In fact, an analysis of both weeks together (see below) does not show a significant benefit of quinine. Third, an adjustment for multiple comparisons should have been included in the data analysis. Given seven variables, two active treatments, and at least three time points at which data could be analyzed (first week, second week, both weeks), the nominally significant differences between treatments at the end of week one would not be expected to retain statistical significance if an adjustment for multiple comparisons were included in the analysis. Even considering the retrospectively identified primary endpoint, a correction for three "looks" (week 1, week 2, and together) would at least double the nominal p-value.

Even without correction for multiplicity, the results do not support the conclusion that quinine sulfate and vitamin E, alone or in combination, are effective for the treatment and/or prevention of nocturnal leg muscle cramps. First, week 2 results fail to replicate the results of week 1. No differences between any of the treatment groups for any parameter were found at the end of week 2, nor was the investigators' global assessment, conducted at the end of the 2-week double-blind period, able to differentiate between treatments. Second, a significant treatment by center interaction was found for the reported superiority of quinine sulfate over placebo in week 1 in reducing the number of nights per week with leg cramps. The result was driven by two of nine centers. In one of these centers, the combination product was indistinguishable from placebo, and in the other, the superiority of placebo over the combination neared statistical significance (p = 0.10). Thus, in the two clinics responsible for the favorable week 1 results of treatment with quinine, there was a failure to replicate the result reported with quinine sulfate alone. Vitamin E was ineffective in all parameters measured throughout the study.

The four retrospectively-declared secondary endpoints for which statistically significant reductions were reported in week 1 in the quinine sulfate group compared to placebo were: (1) The number of cramps per night, (2) the number of nights with sleeping difficulty, (3) the severity of the cramps, and (4) the duration of the cramps. Although a consistent benefit on these endpoints would render a finding on the primary endpoint more persuasive, as with the primary efficacy endpoint, none of the differences between active treatment and placebo persisted through to the end of week 2. For the reasons discussed above, the post hoc, week-1 analysis of these endpoints fails to provide convincing evidence to support the efficacy of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps.

Two additional analyses of the results of the study were submitted (Refs. 8 and 9). The first (Ref. 8) was an analysis of the number of leg cramps per day for each day of the study. This analysis showed occasional days in which quinine was superior to placebo, but is on the whole not helpful. Given an entry cramp rate of one cramp episode per night for at least 3 nights per week, significant differences in any endpoint would not be expected on a day-by-day (i.e., noncumulative) evaluation.

The second analysis (Ref. 9) was of the total cramp rate (mean number of cramps per day over the course of the entire study period) for both the evaluable subset of subjects and the intent-to-treat population. Two analyses were performed on each group. In one analysis, only those subjects who completed the study with at least 14 days of treatment (the completer analysis) were analyzed, while the other analysis involved the results from all subjects with efficacy observations (the endpoint analysis) for the quinine sulfate and placebo treatment groups. In the endpoint analyses, where less than 14 days of treatment was completed, leg cramps for the observed number of days were calculated, and the mean was carried forward to 14 days. None of the four analyses revealed statistically significant reductions in the mean number of leg cramps experienced during 14 days of treatment in the quinine-treated subjects compared with placebo subjects. The endpoint analysis for evaluable patients approached statistical significance for quinine sulfate (p = 0.06), but the results of the completer analysis for evaluable

subjects and both intent-to-treat analyses were clearly negative. The total cramp rate over the entire study is the most straightforward effectiveness measure; it did not show a drug effect on cramps. While the favorable trend on one analysis could suggest activity, the study was already of very substantial size and should have been able to detect a clinically meaningful response. This study, therefore, does not provide evidence of efficacy of quinine sulfate, vitamin E, or the combination thereof in the treatment and/or prevention of nocturnal leg muscle cramps.

Based on the above discussion, the agency concludes that the submitted data are inadequate to establish the effectiveness of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps. Further, the agency concludes that the submitted data do not adequately address the safety and effectiveness issues raised by the agency in the tentative final monograph (see discussion above).

Additional agency comments and evaluations of the data are on file in the Dockets Management Branch (Refs. 10, 11, and 12).

The Commissioner has determined that there are not reasonable grounds in support of a hearing and that a hearing on this issue is not warranted. Six clinical trials have been submitted and have failed to establish the safety and efficacy of quinine sulfate in treating and/or preventing nocturnal leg muscle cramps. Occasional significant differences favoring quinine were not replicated within or between studies. In two crossover design studies (Refs. 3 and 4), appropriate analyses revealed no significant differences between quinine sulfate and placebo. The results of a very large parallel-design, 2-week study showed no significant effect in an analysis of the 2-week data.

In addition, deficiencies in the studies themselves render the reported results unreliable. Each of these studies involved multiple endpoints, none of which was prospectively declared as the primary efficacy variable(s) in any of the studies. There was no attempt to correct significance levels for multiple endpoints. The design of one study did not permit the independent evaluation of the efficacy of quinine sulfate alone (Ref. 1). In three crossover studies (Refs. 2, 3, and 4), the treatment effect was confounded by potential carryover effect and baseline differences. The 2-week, parallel-design study (Ref. 6) showed no effect overall for the entire treatment period, including the investigator's global assessment. Only by considering the results of week 1 separately, an unplanned analysis, was any significant difference between quinine and placebo found in this study, and this finding was confounded by a significant treatment-by-center interaction. For these reasons, the studies cannot be considered adequate and well-controlled clinical investigations as required under § 330.10(a)(4)(ii). The Commissioner concludes that a hearing on this issue is not justified for the reasons stated above.

**References**

(1) Biodesign GmbH, "Clinical Evaluation of Q-VELR in Patients with Nocturnal Leg Muscle Cramps," draft of an unpublished paper in Comment No. SUP00031, Docket No. 77N–0094, Dockets Management Branch.

(2) Leo Winter Associates, Inc., "Final Medical Report and Data Summary Analysis and Final Statistical Report on Double Blind Randomized Crossover Study of Q-VELR Versus Quinine Sulfate Versus Vitamin E Versus Placebo in the Treatment of Nocturnal Leg Muscle Cramps (No. 1285–5082)," draft of an unpublished paper in Comment No. SUP00031, Docket No. 77N–0094, Dockets Management Branch.

(3) Hays, R., and J. J. Goodman, "Clinical Trial of the Efficacy of Quinine Sulfate in the Treatment of Nocturnal Leg Muscle Cramps, Protocol 86–48," draft of an unpublished paper in Comment No. C126, Docket No. 77N–0094, Dockets Management Branch.

(4) Bottner, M., "Clinical Trial of the Efficacy of Quinine Sulfate in the Treatment of Nocturnal Leg Muscle Cramps, Protocol 84–46," draft of an unpublished paper in Comment No. C123, Docket No. 77N–0094, Dockets Management Branch.

(5) Jones, K., and C. M. Castleden, "A Double-Blind Comparison of Quinine Sulphate and Placebo in Muscle Cramps," Age and Ageing, 12(2):155–158, 1983.

(6) Draft of an unpublished study entitled "A Short-Term, Randomized, Double-Blind, Parallel Study of Q-Vel vs. Quinine Sulfate vs. Vitamin E vs. Placebo in the Prevention and Treatment of Nocturnal Leg Cramps," Comment No. SUP00033, Docket No. 77N–0094, Dockets Management Branch.

(7) Patel, H., "Use of Baseline Measurements in the Two-Period Cross-Over Design," *Communications in Statistics-Theory and Methods*, 12(23):2693–2712, 1983.

(8) Comment No. C159, Docket No. 77N–0094, Dockets Management Branch.

(9) Comment No. SUP00041, Docket No. 77N–0094, Dockets Management Branch.

(10) Letter from W. E. Gilbertson, FDA, to K. M. O'Brien, Scholl, Inc., coded LET00059, Docket No. 77N–0094, Dockets Management Branch.

(11) Letter from W. E. Gilbertson, FDA, to L. D. Fantasia, Ciba Consumer Pharmaceuticals, coded LET00060, Docket No. 77N–0094, Dockets Management Branch.

(12) Memorandum of telephone conversation between L. Fantasia, Ciba Consumer Pharmaceuticals, and L. Geismar, FDA, January 4, 1989, coded MT0009, Docket No. 77N–0094, Dockets Management Branch.

13. One comment disagreed with the agency's Category III classification of vitamin E for the treatment and/or prevention of nocturnal leg muscle cramps on the basis of a lack of adequate clinical data demonstrating the effectiveness of vitamin E for this indication (50 FR 46588 at 46591). The comment contended that there is sufficient evidence of vitamin E's effectiveness for this indication at present to warrant classifying it in Category I. The comment subsequently submitted the results of two clinical studies (Refs. 1 and 2) comparing vitamin E, quinine sulfate, a combination product containing vitamin E and quinine sulfate, and placebo for the treatment and/or prevention of nocturnal leg muscle cramps to support the effectiveness of the individual ingredients (vitamin E and quinine sulfate) as well as the combination of these ingredients for this indication. In addition, in responding to a citizen petition, one comment included a clinical study comparing vitamin E, quinine sulfate, a combination product containing both ingredients, and placebo (Ref. 3).

In the tentative final monograph, the agency concluded that there was a lack of controlled studies demonstrating the effectiveness of vitamin E in the treatment and/or prevention of nocturnal leg muscle cramps. The agency also determined that a safe and effective OTC dosage of vitamin E had not been established (50 FR 46588 at 46591). Therefore, the agency classified vitamin E in Category III for this use.

The agency has reviewed the additional clinical data that have been submitted and determined that they are not adequate to support the reclassification of vitamin E to Category I for this use. In one double-blind, randomized, crossover study (Ref. 1), a combination product containing 64.8 mg quinine sulfate and 400 I.U. of vitamin E in a lecithin base was compared to 64.8 mg of quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps in subjects with a history of nocturnal leg muscle cramps. Subjects were randomized into two groups. All subjects took placebo during week 1 and at the end of week 1 only those subjects reporting at least three cramps per week were allowed to continue in the study. One group received the combination product during week 2 and quinine sulfate during week 4, while for the other group this order was reversed. Both groups also received placebo during weeks 3 and 5.

Both quinine sulfate and the combination of quinine sulfate and vitamin E were reported to reduce the frequency of nocturnal leg muscle

cramps in this study. A greater reduction in the frequency of these leg cramps was observed in subjects taking the combination product compared to subjects taking quinine alone. The difference was reported to be statistically significant using Wilcoxon's signed-rank test. No significant differences were found between treatments for either duration or severity of attacks. However, as previously discussed (see section I.C., comment 12), the study report did not include the study protocol, details of the statistical analysis, or individual subject data, and the analysis described does not properly separate carryover effect from treatment effect. Therefore, it is not possible to conclude that either treatment used in this study was effective for this indication.

The second clinical study (Ref. 2) was a double-blind, randomized, crossover study conducted at two sites and involved subjects with at least a 3-month history of at least two significant nocturnal leg muscle cramps per week. The subjects did not receive any drug for the first 1-week run-in period, then received four treatment periods (5 days each) that were separated by a 2-day washout period that included a 2-day drug-free period after the last treatment period. Thus, each subject received each of the four treatments (quinine sulfate 64.8 mg in combination with 400 I.U. vitamin E, 64.8 mg quinine sulfate, 400 I.U. vitamin E, and placebo). A total of 205 subjects (out of 209 subjects originally enrolled) completed the study at the two locations.

Each morning upon arising, subjects recorded on a daily evaluation form their response to questions regarding their difficulty or failure to get to sleep due to night leg cramps and whether or not the cramps had awakened them the previous night. Subjects were also asked to rate on a scale from 0 (no cramps) to 3 (very difficult) the effect of leg cramps on their ability to fall asleep and to record the number, time of occurrence, duration, and severity of leg cramps on the evaluation form. At the end of each weekly treatment period, subjects were asked to complete a global evaluation form and to record any change in their condition during that period, as follows: Greatly improved, slightly improved, no improvement, or worse. Subjects who selected "worse" were asked to explain why.

The comment's statistical analysis of the study evaluated the following variables based on portions of the subjects' daily evaluation forms and their global evaluation of treatment effect: (1) Number of nights per week subjects had difficulty getting to sleep due to night leg cramps, (2) effect of leg cramps on subject's ability to get to sleep, (3) number of nights per week that leg cramps prevented subjects from going to sleep, (4) number of nights per week that leg cramps woke subjects up, (5) number of leg cramps per week, (6) severity of the leg cramps, and (7) subjects' global evaluations of how their condition changed over the previous week. In addition, the following parameters were derived from these variables and evaluated: (1) Number of nights per week with leg cramps, (2) mean number of leg cramps per night, (3) total severity score during each week, (4) mean effect of leg cramps on sleep per week, and (5) mean severity per cramp. Separate analyses of the results from each site and analysis of pooled results from both study cites were reported. Vitamin E was found to be statistically significantly superior to placebo in 7 of the 12 efficacy variables evaluated on the basis of the combined data and in 6 of the 12 variables on the basis of data from at least one of the locations. The combination was found to be statistically superior to the individual ingredients and placebo on 11 out of the 12 variables evaluated on the basis of both the combined data and data from at least one of the locations. On that same basis, quinine sulfate was found to be statistically superior to placebo in 9 of the 12 variables evaluated and to vitamin E in 1 of the 12 variables. The comment concluded that quinine and vitamin E were significantly additive in their effects, and that it was this additive effect that resulted in the highly significant superiority of the combination over its individual components.

The agency has determined that the statistical analysis presented with this study is inadequate for review because the model used does not properly separate the carryover effect from the treatment effect. The model consisted of a sequence or code effect, a subject within code effect, a visit effect, and a treatment effect. For a given subject, this model says that code effect is constant over all visits; thus, carryover effect must be partially confounded with treatment effect. Therefore, the analysis presented cannot be relied upon to demonstrate the efficacy of any of the treatments.

The third clinical study was a multicenter, randomized, block, parallel-design with a single-blind, placebo, run-in period, followed by a 2-week double-blind, randomized, treatment phase (see section I.C., comment 12). No statistically significant treatment effect of vitamin E was detected at the end of the double-blind phase for any variable in this study.

The agency concludes that the submitted data are inadequate to establish the effectiveness of vitamin E or the combination of vitamin E and quinine sulfate for the treatment and/or prevention of nocturnal leg muscle cramps. Therefore, both vitamin E individually and in combination with quinine sulfate are nonmonograph conditions.

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Refs. 4 and 5).

**References**

(1) Biodesign GmbH, "Clinical Evaluation of Q-VELR in Patients with Nocturnal Leg Muscle Cramps," draft of an unpublished paper in Comment No. SUP00031, Docket No. 77N–0094, Dockets Management Branch.

(2) Leo Winter Associates, Inc., "Final Medical Report and Data Summary Analysis and Final Statistical Report on Double Blind Randomized Crossover Study of Q-VELR Versus Quinine Sulfate Versus Vitamine E Versus Placebo in the Treatment of Nocturnal Leg Muscle Cramps (No. 1285–5082)," draft of an unpublished paper in Comment No. SUP00031, Docket No. 77N–0094, Dockets Management Branch.

(3) Draft of an unpublished study entitled "A Short-Term, Randomized, Double-Blind, Parallel Study of Q-Vel vs. Quinine Sulfate vs. Vitamin E vs. Placebo in the Prevention and Treatment of Nocturnal Leg Cramps," Comment No. SUP00033, Docket No. 77N–0094, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to L. D. Fantasia, Ciba Consumer Pharmaceuticals, coded LET00060, Docket No. 77N–0094, Dockets Management Branch.

(5) Memorandum of telephone conversation between L. Fantasia, Ciba Consumer Pharmaceuticals, and L. Geismar, FDA, January 4, 1989, coded MT00009, Docket No. 77N–0094, Dockets Management Branch.

*D. Comments on Labeling*

14. Several comments requested revisions in parts of the labeling proposed in the tentative final monograph. Two comments disagreed with the agency's statement of identity. One comment argued that it was a restatement of the indication proposed in § 343.150(b). In place of the agency's proposed statement of identity ("nocturnal leg muscle cramps treatment and/or prevention"), one comment requested that "muscle relaxant pain reliever" or "analgesic" be used. The comment contended that its suggestions were more descriptive of general pharmacological categories as described in 21 CFR 201.61. Another comment suggested changing the statement to "night leg cramp relief," arguing that this statement would be

more "meaningful to the layman" in accord with 21 CFR 201.61. The comment added that its suggested term is currently used in the labeling of a major OTC quinine product and reflects a more contemporary description of the condition being treated.

Referring to the warning proposed in § 343.150(c) that reads "Discontinue use if ringing in the ears, deafness, skin rash, or visual disturbances occur," one comment requested that the words "and consult a physician" be added following "discontinue use." The comment believed that such a warning would facilitate further medical treatment, if deemed necessary. The comment added that the agency had proposed similar warnings in other OTC drug monographs, for example, proposed § 333.50(c)(2) and (c)(3) for topical acne drug products (January 15, 1985, 50 FR 2172 at 2181). The comment explained that this addition to the warning would better serve the elderly, the population most likely to use the product.

One comment recommended that the agency distinguish between treatment and prevention directions for the drug, and proposed the following: "When night leg cramps occur, take 200–325 mg at once. To help prevent further night leg cramps, take 200–325 mg two hours before bedtime for 14 days. Do not exceed more than 325 mg daily." The comment concluded that, in providing adequate directions for use, it is appropriate to discuss dosages for initial onset of leg muscle cramps and for prevention of future cramps.

No ingredients for treating and/or preventing nocturnal leg muscle cramps are currently generally recognized as safe and effective for inclusion in an OTC drug monograph; thus, no OTC labeling is being finalized at this time. Accordingly, the comments' requests are not being addressed in this document. However, in the event that any ingredient for treating and/or preventing nocturnal leg muscle cramps reaches OTC drug monograph status, the agency will determine appropriate labeling at that time and publish it in a future issue of the **Federal Register**.

## II. The Agency's Final Conclusions on OTC Drug Products For The Treatment and/or Prevention of Nocturnal Leg Muscle Cramps

The agency concludes that the data and information submitted are inadequate to establish the safety and effectiveness of quinine sulfate, vitamin E, or the combination of quinine sulfate and vitamin E for the treatment and/or prevention of nocturnal leg muscle cramps.

Three clinical studies of vitamin E, alone or in combination with quinine sulfate, were submitted. The report of one of the studies provided no details of the statistical analysis conducted; the model described in the summary of the analysis failed to separate carryover effect from treatment effect; and neither the protocol nor the individual subject data were provided. Independent verification of the conclusions presented, therefore, was not possible. On the basis of the information provided in the report, no conclusions about the efficacy of vitamin E are possible from this study. In another study, a statistically significant effect of vitamin E was reported in 7 of 12 endpoints, and statistically significant differences from placebo were reported in 11 of 12 endpoints for the combination product. In this study, however, treatment effect was confounded by carryover effect making it impossible to ascribe observed differences to vitamin E. Further, the third study, a large, multicenter, 2-week, parallel-design study comparing vitamin E, quinine sulfate, a combination of vitamin E and quinine sulfate, and placebo showed no significant difference for vitamin E compared to placebo on any parameter at the end of the double-blind treatment period.

Six clinical trials were submitted to establish the safety and efficacy of quinine sulfate in treating and/or preventing nocturnal leg muscle cramps. Effectiveness results reported as significant were not replicated within or between studies. In two crossover studies, significant differences between quinine sulfate and placebo were seen only in the second leg of the crossover, and there were significant pretreatment differences. Analysis of the first leg of these crossover studies showed no effect of quinine. In a large, 2-week, parallel study of quinine sulfate, vitamin E, and the combination of these ingredients versus placebo, no statistically significant differences were found between active treatments and placebo for the full 2 weeks of the study. Furthermore, each study involved multiple endpoints, none of which was prospectively declared as the primary efficacy variable(s) in any study. Statistical analysis was conducted without regard to adjustment for multiple comparisons, casting doubt on the validity of claimed statistical significance in many cases. In three crossover studies, the treatment effect was confounded by potential carryover effect making it impossible to attribute the results to the study drugs. The agency concludes that the data and information submitted do not provide substantial evidence of effectiveness of quinine sulfate, vitamin E, or a combination of quinine sulfate and vitamin E, in the treatment and/or prevention of nocturnal leg muscle cramps.

Finally, new information has raised serious safety concerns over the OTC availability of quinine sulfate for this use. Adverse events characteristic of quinine toxicity were observed in the healthy populations enrolled in the clinical efficacy studies at doses of 260 mg and 325 mg daily. These events included: Visual, auditory, and gastrointestinal symptoms, and fever. Studies of auditory, vestibular, and visual function in subjects given quinine confirm sensory disturbances at even lower doses. Altered pharmacokinetics with age results in a longer half-life of quinine in older people that suggests the frequency and severity of adverse effects may be greater in the elderly.

In addition to these adverse effects, serious and unpredictable hypersensitivity reactions to quinine occur. Symptoms are often dramatic, leading people to seek medical treatment. Hospitalization may be required, and fatalities have been reported. While quinine-induced thrombocytopenia is the hypersensitivity reaction most frequently reported to the agency's spontaneous reporting system, estimates of the incidence of quinine-induced thrombocytopenia are unreliable. Estimates based on the most direct evidence, however, suggest occurrence rates between 1:1,000 and 1:3,500. Quinine is the only drug available OTC that has such a high association with this serious hematologic sensitivity. Because there are no known factors that predispose people to the development of hypersensitivity to quinine, which may occur after 1 week of exposure or after months or years of use, label warnings cannot be expected to protect consumers from hypersensitivity reactions to quinine products.

Given the benign nature of nocturnal leg muscle cramps, the failure of the clinical studies to demonstrate efficacy of quinine sulfate in this condition, the evidence of symptoms of quinine toxicity at the OTC doses employed for leg cramps in a proportion of the target population, and the potential for serious, life threatening, and fatal hypersensitivity reactions to quinine, the agency concludes that quinine is not safe for OTC use in the treatment and/or prevention of nocturnal leg muscle cramps.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 43562 and 50 FR 46588 at 46593).

An analysis of the cost and benefits of this regulatuion, conducted under Executive Order 12291, was discussed in the tentative final rule of November 8, 1985, (50 FR 46588). No comments were received in response to the agencies tentative final rule, and the substances of that analysis has not changed. Executive Order 12291 has been superseded by Executive Order 12866. FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Although the final rule will result in the removal of some products from the OTC marketplace, only a limited number of products are affected. These include: (1) All combination products containing quinine sulfate and vitamin E, (2) products containing quinine sulfate alone labeled for the treatment and/or prevention of nocturnal leg muscle cramps, (3) products containing vitamin E alone labeled with the same claim, and (4) any other products marketed OTC for this claim. No further initial introduction or delivery for introduction into interstate commerce of any OTC drug product labeled for the treatment and/or prevention of nocturnal leg muscle cramps will be allowed after the effective date of this final rule. Quinine is currently available as an OTC drug for treating chills and fever of malaria. Based on an agency review of currently marketed products, it appears that approximately two-thirds of these quinine-containing products are marketed for antimalarial use (with approximately one-third for the treatment and/or prevention of nocturnal leg muscle cramps). (OTC quinine drug products for antimalarial use will be discussed in future issues of the **Federal Register**.) Vitamin E is currently available OTC for use as a vitamin. This final rule does not affect the continued marketing and availability of products containing this vitamin provided the products are not labeled for the treatment and/or prevention of nocturnal leg muscle cramps. Products containing quinine sulfate and/or vitamin E may be relabeled and reformulated where necessary (e.g., combination products) and remain in the marketplace with other allowed claims, as described above. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 310**

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

## PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. New § 310.546 is added to subpart E to read as follows:

**§ 310.546 Drug products containing active ingredients offered over-the-counter (OTC) for the treatment and/or prevention of nocturnal leg muscle cramps.**

(a) Quinine sulfate alone or in combination with vitamin E has been present in over-the-counter (OTC) drug products for the treatment and/or prevention of nocturnal leg muscle cramps, i.e., a condition of localized pain in the lower extremities usually occurring in middle life and beyond with no regular pattern concerning time or severity. There is a lack of adequate data to establish general recognition of the safety and effectiveness of quinine sulfate, vitamin E, or any other ingredients for OTC use in the treatment and/or prevention of nocturnal leg muscle cramps. In the doses used to treat or prevent this condition, quinine sulfate has caused adverse events such as transient visual and auditory disturbances, dizziness, fever, nausea, vomiting, and diarrhea. Quinine sulfate may cause unpredictable serious and life-threatening hypersensitivity reactions requiring medical intervention and hospitalization; fatalities have been reported. The risk associated with use of quinine sulfate, in the absence of evidence of its effectiveness, outweighs any potential benefit in treating and/or preventing this benign, self-limiting condition. Based upon the adverse benefit-to-risk ratio, any drug product containing quinine or quinine sulfate cannot be considered generally recognized as safe for the treatment and/or prevention of nocturnal leg muscle cramps.

(b) Any OTC drug product that is labeled, represented, or promoted for the treatment and/or prevention of nocturnal leg muscle cramps is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use for the treatment and/or prevention of nocturnal leg muscle cramps is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After February 22, 1995, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: August 4, 1994.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 94–20449 Filed 8–19–94; 8:45 am]

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Federal Register

Monday
August 22, 1994

Part V

# The President
# Panama Canal Commission

35 CFR Parts 133 and 135
Tolls for Use of Canal and Rules for Measurement of Vessels; Final Rule

THE PRESIDENT

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207–AA23

## Tolls for Use of Canal and Rules for Measurement of Vessels

**AGENCY:** Panama Canal Commission.

**ACTION:** Final rule.

**SUMMARY:** This rule executes a major revision of the rules for measurement of vessels using the Panama Canal effective October 1, 1994. The existing rules of measurement are replaced with a simplified, objective approach which brings the Commission's system in line with an international practice which entered into full application worldwide on July 18, 1994. The revised measurement rules apply a mathematical formula to the vessel's total volume to produce the basis for assessing tolls. The tonnage values computed under the proposed system are comparable to those calculated under the Commission's existing rules and, in the aggregate, are equal to existing tonnages. Accordingly, no changes are made to the rates of toll for use of the Canal; however, certain administrative changes to the regulations dealing with Canal tolls are necessary to ensure their consistency with the revised rules of measurement.

**EFFECTIVE DATE:** October 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Michael Rhode, Jr., Secretary, Panama Canal Commission, 1825 I Street NW, Suite 1050, Washington, DC 20006–5402, (Telephone: (202) 634–6441) (Facsimile: (202) 634–6439).

**SUPPLEMENTARY INFORMATION:** Pursuant to the procedures set forth in section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, and in the regulations at 35 CFR part 70, on April 18, 1994, an advance notice of proposed rulemaking was published in the **Federal Register** (59 FR 18332) recommending a complete revision to the Rules for Measurement of Vessels for the Panama Canal contained in 35 CFR part 135. The change is designed to simplify the Commission's measurement procedures and bring measurement rules at the Canal in line with the worldwide standard of tonnage measurement as contained in the 1969 International Convention on Tonnage Measurement of Ships. At that time, a written analysis showing the basis and justification for the proposed revision was made available to interested parties.

The revised 35 CFR part 135 provides for:

a. Establishment of measurement rules for the Panama Canal Commission which are based on Annex 1 of the Convention;

b. Transitional relief measures for certain vessels, provided they do not have a structural change which results in an alteration of 10 percent or more in their total volume;

c. Continued use of foreign tonnage authorities, and for acceptance of reasonably accurate volumes provided by them;

d. Correction of tonnage values as necessary to satisfy the Commission's desire for accuracy; and

e. Calculation of volumes for vessels without an International Tonnage Certificate 1969 (ITC 69) through an alternative tonnage estimating formula.

In addition to the changes to 35 CFR part 135, certain administrative changes to 35 CFR part 133 (Tolls for Use of Canal) are required. These changes will reconcile the language of part 133 with the revised part 135 by allowing for the use of the ITC 69 to obtain the required total volume information.

Written comments were solicited and received from interested parties, and a public hearing was held May 25, 1994 in Washington, DC. The views presented by the interested parties were considered by the Board of Directors of the Panama Canal Commission at its quarterly meeting of July 1994. On July 13, the Board agreed to recommend to the President the revisions to the existing measurement system and the implementation of the Panama Canal Universal Measurement System (PC/UMS). The proposed rule and recommendation to the President was published in the **Federal Register** (59 FR 36398) on July 18, 1994. A complete record of the proceedings since the initiation of the proposal, including the views of the interested parties, was included in the Canal Commission's final recommendation forwarded to the President.

### List of Subjects in 35 CFR Parts 133 and 135

Measurement, Navigation, Panama Canal, Vessels.

Accordingly, 35 CFR parts 133 and 135 are amended as follows:

## PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 is revised to read as follows:

**Authority:** 22 U.S.C. 3791; E.O. 12215, 45 FR 36043, 3 CFR, 1981 Comp., p. 257.

2. Section 133.1 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

**§ 133.1 Rates of toll.**

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per PC/UMS Net Ton—that is, the Net Tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per PC/UMS Net Ton.

* * * * *

3. Section 133.31 is revised to read as follows:

**§ 133.31 Measurement of vessels; vessels to secure tonnage certificate.**

The rules for the measurement of vessels are fixed by part 135 of this chapter. Vessels desiring to transit the Canal shall provide themselves with a tonnage certificate in accordance with § 133.32.

4. Section 133.32 is revised to read as follows:

**§ 133.32 Measurement of vessels; making and correction of measurements; plans and copies.**

Measurements may be made by the admeasurers of the Canal or certain other officials worldwide as designated by the Panama Canal Commission. Each transiting vessel should have aboard and available to Canal authorities a full set of plans and a copy of the measurements which were made at the time of issue of its International Tonnage Certificate (1969), as well as the tonnage certificate itself. A copy of the International Tonnage Certificate (1969) shall be provided to Canal authorities. The Commission reserves the right to check and correct the total volume that is to be used in the calculation of the PC/UMS Net Tonnage.

(Approved by the Office of Management and Budget (OMB) under control number 3207–0001)

5. Section 133.33 is revised to read as follows:

**§ 133.33 Measurement of vessels; temporary retention of certificate at Canal.**

The official PC/UMS Net Tonnage certificate shall be delivered by the Canal authorities to the vessel or to the owner or agent of the vessel after transit completion. This certificate shall be retained on board the vessel and shall be used to certify that the vessel has been inspected and its PC/UMS Net

Tonnage has been determined by the Commission.

6. Part 135 is revised to read as follows:

## PART 135—RULES FOR MEASUREMENT OF VESSELS

### Subpart A—General Provisions

Sec.

135.1 Scope.
135.2 Vessels generally to present tonnage certificate or be measured.
135.3 Determination of total volume.
135.4 Administration and interpretation of rules.

### Subpart B—PC/UMS Net Tonnage Measurement

135.11 Tonnage.
135.12 Definitions.
135.13 Determination of PC/UMS Net Tonnage.
135.14 Change of PC/UMS Net Tonnage.
135.15 Calculation of volumes.
135.16 Measurement and calculation.

### Subpart C—Warships, Dredges and Floating Drydocks

135.21 Warships, dredges and floating drydocks to present documents stating displacement tonnage.
135.22 Tolls on warships, dredges and floating drydocks levied on actual displacement.

### Subpart D—Transitional Relief Measures

135.31 Transitional relief measures.

### Subpart E—Alternative Method for Measurement of Vessels

135.41 Measurement of vessels when volume information is not available.
135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

**Authority:** 22 U.S.C. 3791; E.O. 12215, 45 FR 36043, 3 CFR 1981 Comp., p. 257.

## Subpart A—General Provisions

### § 135.1 Scope.

This part establishes the procedures for determining the Panama Canal Universal Measurement System (hereinafter PC/UMS) Net Tonnage. The tonnage shall be used to assess tolls for use of the Panama Canal. Also, the tonnage may be used, when adequate volume information is not provided, to assess the charge for admeasurement services.

### § 135.2 Vessels generally to present tonnage certificate or be measured.

All vessels except warships, floating drydocks, dredges, and vessels subject to transitional relief measures, applying for passage through the Panama Canal shall present a duly authenticated International Tonnage Certificate (1969) (hereinafter ITC 69), or suitable substitute (i.e., a certificate derived from a system which is substantially similar to that which was provided for in the 1969 International Convention on Tonnage Measurement of Ships, and which contains the total volume or allows for the direct mathematical determination of total volume). Vessels without such total volume information shall be inspected by Canal authorities who shall determine an appropriate volume for use in the calculation of a PC/UMS Net Tonnage of such vessels.

(Approved by the Office of Management and Budget (OMB) control number 3207–0001)

### § 135.3 Determination of total volume.

(a) The determination of total volume used in the calculation of PC/UMS Net Tonnage shall be carried out by the Panama Canal Commission. In so doing, however, the Commission may rely upon total volume information provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates. Total volume information presented at the Panama Canal shall be subject to verification, and if necessary, correction insofar as may be necessary to ensure accuracy to a degree acceptable to the Panama Canal Commission.

(b) The Commission may, when it is deemed necessary to verify information contained on the ITC 69, require the submission of additional documents. Failure to submit the requested documentation may result in the Commission's developing a figure that accurately reflects the vessel's volume.

(Approved by Office of Management and Budget (OMB) under control number 3207–0001)

### § 135.4 Administration and interpretation of rules.

The rules of measurement provided in this part shall be administered and interpreted by the Administrator of the Panama Canal Commission.

## Subpart B—PC/UMS Net Tonnage Measurement

### § 135.11 Tonnage.

(a) The tonnage of a ship shall consist of PC/UMS Net Tonnage.

(b) The net tonnage shall be determined in accordance with the provisions of the regulations in this subpart.

(c) The net tonnage of novel types of craft whose constructional features are such as to render the application of the provisions of the regulations in this subpart unreasonable or impracticable shall be determined in a manner which is acceptable to the Panama Canal Commission.

### § 135.12 Definitions.

(a) *Upper Deck* means the uppermost complete deck exposed to weather and sea, which has permanent means of weathertight closing of all openings in the weather part thereof, and below which all openings in the sides of the ship are fitted with permanent means of watertight closing. In a ship having a stepped upper deck, the lowest line of the exposed deck and the continuation of that line parallel to the upper part of the deck is taken as the upper deck.

(b) *Moulded Depth* means the vertical distance measured from the top of the keel to the underside of the upper deck at side.

(1) In wood and composite ships the distance is measured from the lower edge of the keel rabbet. Where the form at the lower part of the midship section is of a hollow character, or where thick garboards are fitted, the distance is measured from the point where the line of the flat of the bottom continued inwards cuts the side of the keel.

(2) In ships having rounded gunwales, the moulded depth shall be measured to the point of intersection of the moulded lines of the deck and side shell plating, the lines extending as though the gunwales were of angular design.

(3) Where the upper deck is stepped and the raised part of the deck extends over the point at which the moulded depth is to be determined, the moulded depth shall be measured to a line of reference extending from the lower part of the deck along a line parallel with the raised part.

(c) *Breadth* or *moulded breadth* means the maximum breadth of the ship, measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material.

(d) *Enclosed spaces* mean all spaces which are bounded by the ship's hull, by fixed or portable partitions or bulkheads, by decks or coverings other than permanent or movable awnings. No break in a deck, nor any opening in the ship's hull, in a deck or in a covering of a space, or in the partitions or bulkheads of a space, nor the absence of a partition or bulkhead, shall preclude a space from being included in the enclosed space.

(e) *Excluded spaces* mean, notwithstanding the provisions of paragraph (d) of this section, the spaces referred to in paragraphs (e)(1) to (e)(5) of this section. Excluded spaces shall not be included in the volume of enclosed spaces, except that any such space which fulfills at least one of the following three conditions shall be treated as an enclosed space:

—The space is fitted with shelves or other means for securing cargo or stores;
—The openings are fitted with any means of closure; or
—The construction provides any possibility of such openings being closed.

(1)(i) A space within an erection opposite an end opening extending from deck to deck except for a curtain plate of a depth not exceeding by more than 25 millimeters (one inch) the depth of the adjoining deck beams, such opening having a breadth equal to or greater than 90 percent of the breadth of the deck at the line of the opening of the space. This provision shall be applied so as to exclude from the enclosed spaces only the space between the actual end opening and a line drawn parallel to the line or face of the opening at a distance from the opening equal to one-half of the width of the deck at the line of the opening (Figure 1).

In the figure:
O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

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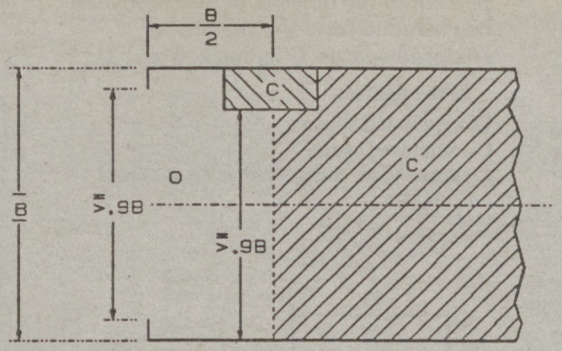



Fig. 1

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(ii) Should the width of the space because of any arrangement except by convergence of the outside plating, become less than 90 percent of the breadth of the deck, only the space between the line of the opening and a parallel line drawn through the point where the athwartships width of the space becomes equal to, or less than, 90 percent of the breadth of the deck shall be excluded from the volume of enclosed spaces. (Figures 2, 3 and 4).

In the figures:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

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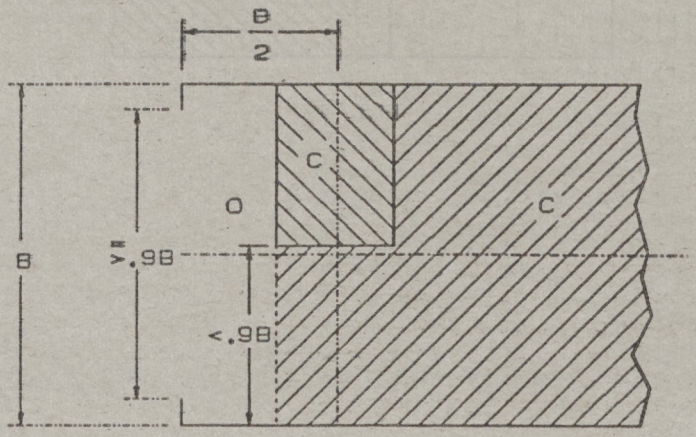



Fig. 2

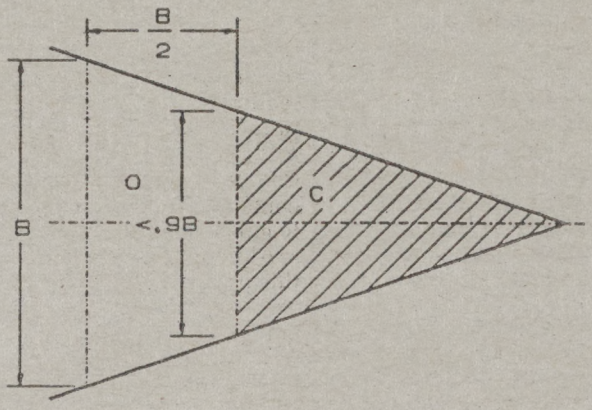



Fig. 3

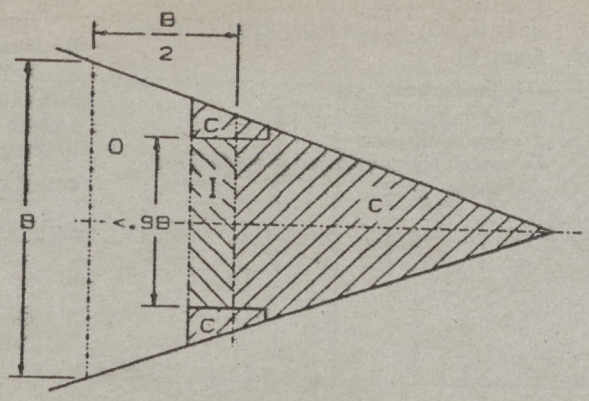



Fig. 4

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(iii) Where an interval which is completely open except for bulwarks or open rails separates any two spaces, the exclusion of one or both of which is permitted under paragraphs (e)(1)(i) and/or (e)(1)(ii) of this section, such exclusion shall not apply if the separation between the two spaces is less than the least half breadth of the deck in way of the separation. (Figures 5 and 6).

In the figures:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

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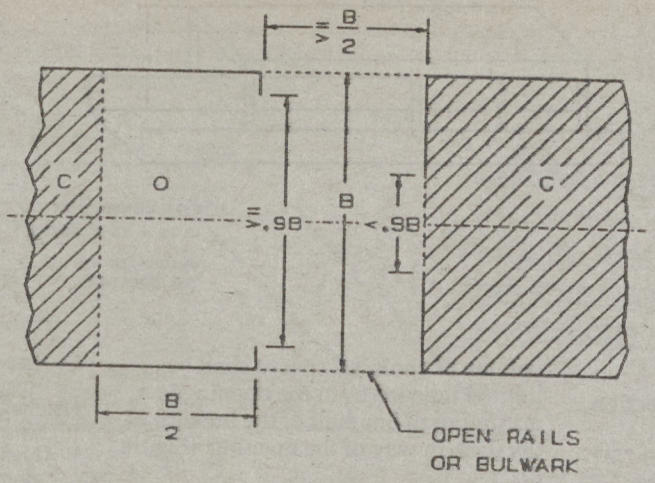



Fig. 5

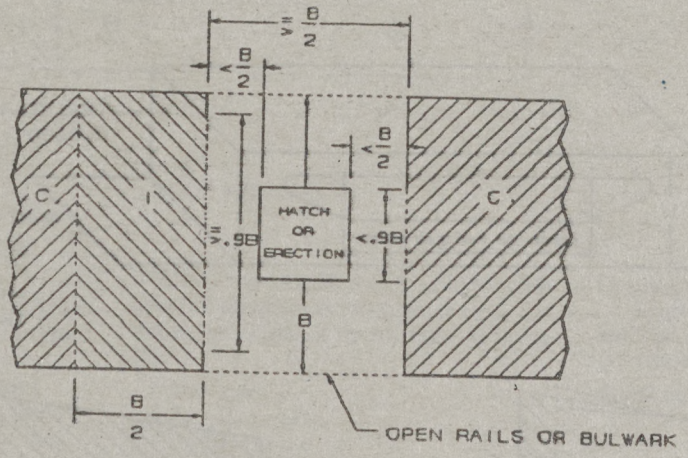



Fig. 6

BILLING CODE 3640-04-C

(2) A space under an overhead deck covering open to the sea and weather, having no other connection on the exposed sides with the body of the ship than the stanchions necessary for its support. In such a space, open rails or a bulwark and curtain plate may be fitted or stanchions fitted at the ship's side, provided that the distance between the top of the rails or the bulwark and the curtain plate is not less than 0.75 meters (2.5 feet) or one-third of the height of the space, whichever is the greater. (Figure 7).

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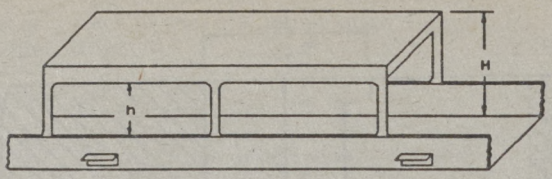



Fig. 7

h = AT LEAST $\frac{H}{3}$ OR
0.75 m (2.5 FEET)
WHICHEVER IS
THE GREATER

BILLING CODE 3640-04-C

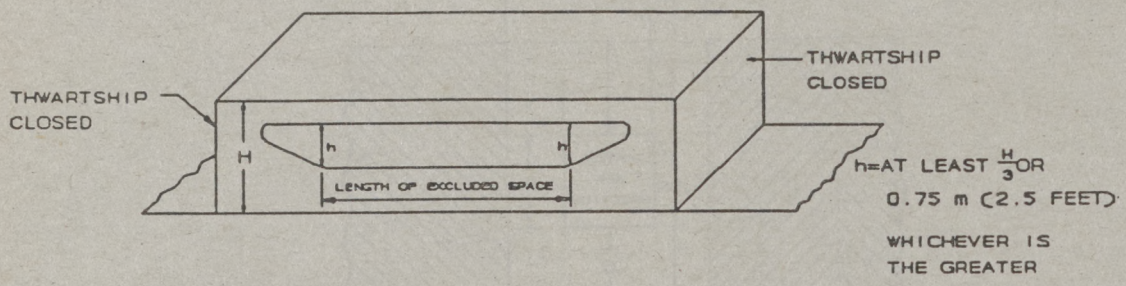
(3) A space in a side-to-side erection directly in way of opposite side openings not less in height than 0.75 meters (2.5 feet) or one-third of the height of the erection, whichever is the greater. If the opening in such an erection is provided on one side only, the space to be excluded from the volume of enclosed spaces shall be limited inboard from the opening to a maximum of one-half of the breadth of the deck in way of the opening. (Figure 8).

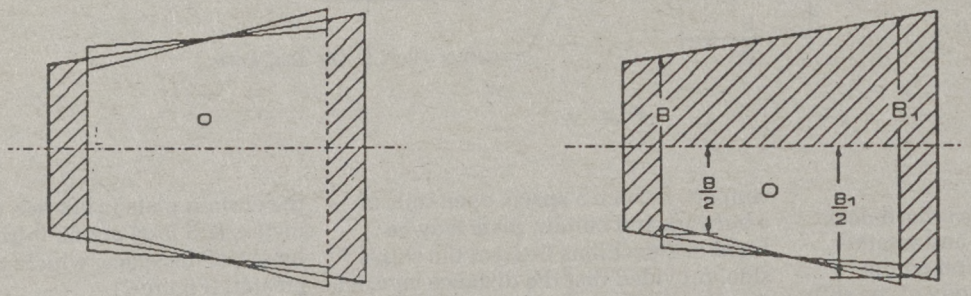
In the figures:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

BILLING CODE 3640-04-P




OPPOSITE SIDE OPENINGS

OPENING ON ONE SIDE ONLY

Fig. 8

BILLING CODE 3640-04-C

(4) A space in an erection immediately below an uncovered opening in the deck overhead, provided that such an opening is exposed to the weather and the space excluded from enclosed spaces is limited to the area of the opening. (Figure 9).

BILLING CODE 3640-04-P

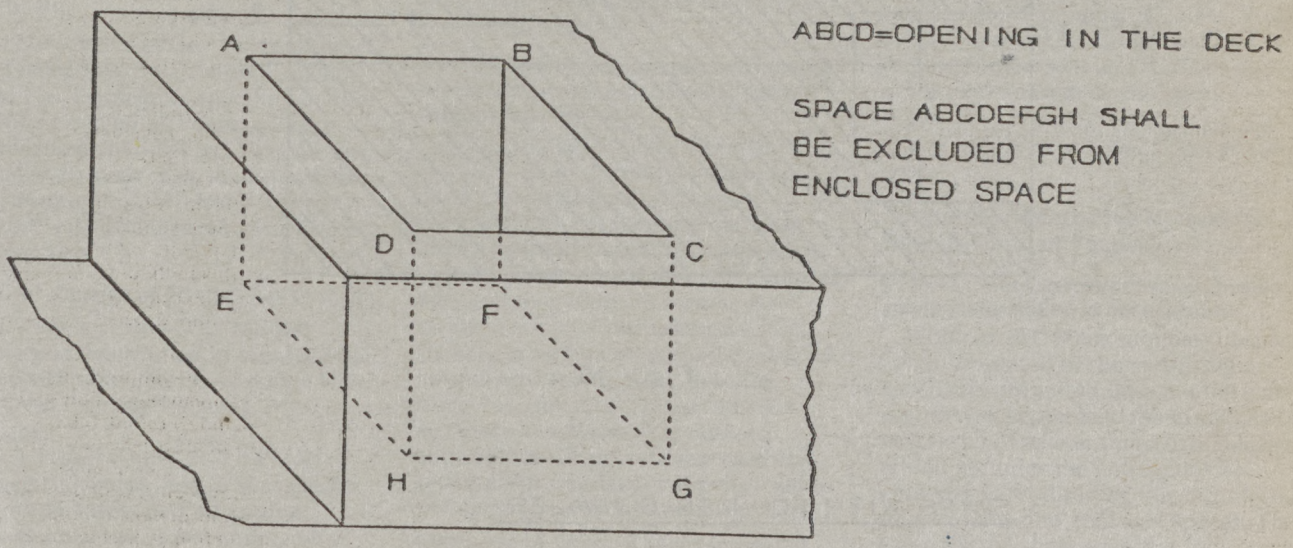



Fig. 9

BILLING CODE 3640-04-C

(5) A recess in the boundary bulkhead of an erection which is exposed to the weather and the opening of which extends from deck to deck without means of closing, provided that the interior width is not greater than the width at the entrance and its extension into the erection is not greater than twice the width of its entrance. (Figure 10).

In the figure:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.

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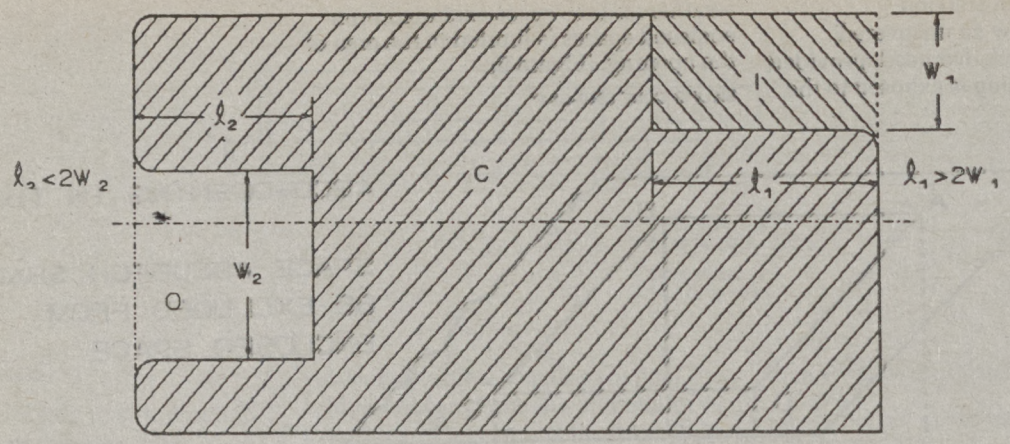



Fig. 10

SHIPS WITH ROUNDED GUNWALES

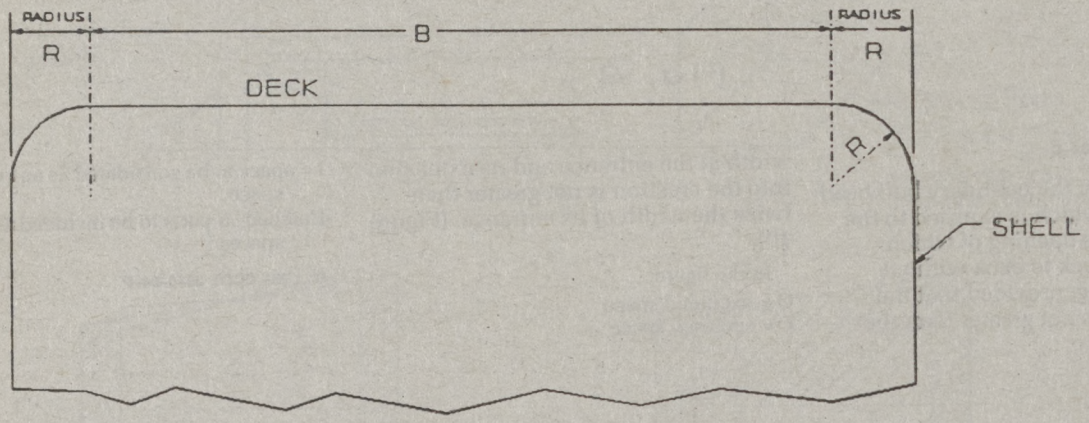



Fig. 11

BILLING CODE 3640-04-C

(f) *Passenger* means every person other than:

(1) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and

(2) a child under one year of age.

(g) *Weathertight* means that in any sea conditions water will not penetrate into the ship.

**§ 135.13 Determination of PC/UMS Net Tonnage.**

PC/UMS Net Tonnage shall be determined as follows:

(a) For all vessels with tolls fixed in accordance with § 133.1(a) or (b) of this chapter, unless subject to the transitional relief measures established in § 135.31 of this chapter, the formula for determining PC/UMS Net Tonnage is:

PC/UMS Net Tonnage = $K_4(V) + K_5(V)$

in which formula:

(1) "$K_4$"=$\{0.25 + [0.01 \times \text{Log}_{10}(V)]\} \times 0.830$

(2) "$K_5$"=$[\text{Log}_{10}(DA-19)]/\{[\text{Log}_{10}(DA-16)] \times 17\}$. If the number of passengers ($N_1 + N_2$) is greater than 100 or DA is equal to or less than 20.0 meters then K5 is equal to zero.

(3) "V"=Total volume of all enclosed spaces of the ship in cubic meters and is identical to V as specified in the 1969 International Convention on Tonnage Measurement of Ships.

(4) "DA" (Average depth)=The result of the division of the Total Volume by the product of the length in meters multiplied by the moulded breadth in meters. DA=V/(L × MB).

(5) "L" (Length) is defined as 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline.

(6) Moulded breadth is defined in § 135.12(c).

(7) $N_1$=number of passengers in cabins with not more than 8 berths.

(8) $N_2$=number of other passengers.

(9) $N_1 + N_2$=total number of passengers the ship is permitted to carry as indicated in the ship's passenger certificate.

(b) For vessels subject to transitional relief measures, the existing Panama Canal Net Tonnage as specified on the certificate issued by Panama Canal Commission shall be the PC/UMS Net Tonnage. In such case, the formula for determining PC/UMS Net Tonnage is: PC/UMS Net Tonnage=Panama Canal Net Tonnage.

### § 135.14 Change of PC/UMS Net Tonnage.

(a) Vessels whose PC/UMS Net Tonnage is determined in accordance with § 135.13(a) shall have a new PC/UMS Net Tonnage issued if "V" changes.

(b) A vessel whose PC/UMS Net Tonnage is determined in accordance with § 135.13(b) shall retain that tonnage until the vessel undergoes a significant structural change as defined in § 135.14(c). In the event of a significant structural change, the vessel's PC/UMS Net Tonnage shall be determined in accordance with § 135.13(a).

(c) For the purposes of paragraph (b) of this section, significant structural change means an actual change of at least 10 percent in the total volume of the vessel. Vessels without comparative ITC 69 total volumes, or other suitable sources of total volume comparison, shall have a fair and equitable volume comparison made by the Commission to determine if a significant structural change has occurred.

### § 135.15 Calculation of volumes.

(a) All volumes included in the calculation of PC/UMS Net Tonnage shall be measured, irrespective of the fitting of insulation or the like, to the inner side of the shell or structural boundary plating in ships constructed of metal, and to the outer surface of the shell or to the inner side of structural boundary surfaces in ships constructed of any other material.

(b) Volumes of appendages shall be included in the total volume.

(c) Volumes of spaces open to the sea may be excluded from the total volume.

### § 135.16 Measurement and calculation.

(a) All measurements used in the calculation of volumes shall be taken to the nearest centimeter or one-twentieth of a foot.

(b) The volumes shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

(c) The calculation shall be sufficiently detailed to permit easy checking.

## Subpart C—Warships, Dredges and Floating Drydocks

### § 135.21 Warships, dredges and floating drydocks to present documents stating displacement tonnage.

All warships, dredges and floating drydocks shall present documents stating accurately the tonnage of displacement at each possible mean draft. The term "warship" means any vessel of government ownership that is being employed by its owners for military or naval purposes and shall include armed coast guard vessels and vessels devoted to naval training purposes, but shall not include naval auxiliary vessels such as tankers, ammunition ships, refrigerator ships, repair ships, tenders or vessels used to transport general military supplies.

(Approved by Office of Management and Budget (OMB) under control number 3207–0001)

### § 135.22 Tolls on warships, dredges and floating drydocks levied on actual displacement.

The toll on warships, dredges and floating drydocks shall be based upon their tonnage of actual displacement at the time of their application for passage through the Canal. The actual displacement of these vessels shall be determined in a manner acceptable to the Commission and shall be expressed in tons of 2240 pounds. Should any of these vessels not have on board documents from which the displacement can be determined, Commission officials may use any practicable method to determine the displacement tonnage for assessment of tolls.

## Subpart D—Transitional Relief Measures

### § 135.31 Transitional relief measures.

Transitional relief measures as specified in § 135.13(b) shall be applied to a vessel which has made a transit of the Panama Canal between March 23, 1976 and September 30, 1994, inclusive, and has not had a significant structural change as defined in § 135.14(c) since the last transit during the above period. Any significant structural change made after the granting of transitional relief measures shall disqualify a vessel for further relief, and the vessel shall be handled in accordance with the provisions of § 135.13(a). Transitional relief measures are applied to the vessel during its entire active service life as long as the vessel does not undergo a significant structural change. Vessels subject to transitional relief measures shall present their existing Panama Canal Tonnage Certificate on their first transit after September 30, 1994. Vessels subject to relief measures shall not be required to present an ITC 69 or any other total volume certification.

(Approved by Office of Management and Budget (OMB) under control number 3207–0001)

## Subpart E—Alternative Method for Measurement of Vessels

### § 135.41 Measurement of vessels when volume information is not available.

When an ITC 69 or suitable substitute is not presented or the certificate or substitute presented does not have an accuracy acceptable to the Commission, vessels shall be measured in a manner which includes the entire cubical contents as required by the definition of total volume and enclosed spaces. The Commission shall endeavor to determine an accurate total volume of the vessel using the best information available at the time of the determination. The total volume shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

### § 135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

(a) Vessels without an ITC 69, a suitable substitute or documentation from which to calculate total volume shall be measured as follows:

(1) The volume of structures above the upper deck may be determined by any accepted method or combination of methods. These methods include but are not limited to simple geometric formulas, Simpson's rules, and other standard mathematical formulas. If special procedures are used, they should be identified. In all cases, measurements and calculations should be sufficiently detailed to permit easy review.

(2) The volume of the hull below the upper deck (UDV) shall be determined as follows:

(i) The formula:

$$UDV=\{0.91 \times [(LOA \times MB) \times (D - SLD)]\square + (SLDISP/1.025)$$

Where:

UDV=Total volume of all enclosed spaces below the upper deck in cubic meters.

LOA=The Length overall, i.e., the length of the ship in meters from the foremost to the aftermost points, including a bulbous bow if present.

MB=Moulded breadth in meters as defined in § 135.12(c).

D=Moulded depth in meters as defined in § 135.12(b).
SLD=Summer loaded draft (in meters), i.e., the maximum depth to which the vessel's hull may be immersed when in a summer zone.
SLDISP=Summer loaded displacement, i.e., the actual weight in metric tons of the water displaced by the vessel when immersed to her SLD.

(ii) If § 135.42(a)(2)(i) proves unworkable, the total volume of the hull below the upper deck shall be determined by multiplying the product of the LOA, MB and D by the appropriate coefficient listed in the following table:

| LOA in meters | Coefficient |
|---|---|
| 0 to 30 | .7150 |
| > 30 to 60 | .7250 |
| > 60 to 90 | .7360 |
| > 90 to 120 | .7453 |
| > 120 to 150 | .7328 |
| > 150 to 180 | .7870 |
| > 180 to 210 | .8202 |
| > 210 to 240 | .7870 |
| > 240 to 270 | .7328 |
| > 270 | .7453 |

(3) The total volume of a vessel is the sum of the volume of the structures above the upper deck as determined in accordance with § 135.42(a)(1) and the volume of the hull below the upper deck as determined in accordance with § 135.42(a)(2) (i) or (ii).

(b) Vessels which have had their total volume determined in accordance with § 135.41 or this section may apply for readmeasurement when they have a new or corrected ITC 69, a suitable substitute or present documentation sufficient to calculate total volume.

Dated: August 17, 1994.

The White House.

**William J. Clinton,**

*President.*

[FR Doc. 94–20534 Filed 8–19–94; 8:45 am]

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Federal Register

Monday
August 22, 1994

Part VI

# Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926
Hazardous Waste Operations and Emergency Response; Final Rule

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910 and 1926

### Hazardous Waste Operations and Emergency Response

**AGENCY:** Occupational Safety and Health Administration (OSHA).

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is issuing technical amendments to existing Appendix B and is adding a new non-mandatory Appendix E to both 29 CFR 1910.120, *Hazardous Waste Operations and Emergency Response* and 29 CFR 1926.65, *Hazardous Waste Operations and Emergency Response.* The technical amendments to the Appendix B involve the updating of certain reference sources listed in Appendix B to both 29 CFR 1910.120 and 1910.65. The new Appendix E provides suggested guidelines for a more effective training curriculum and program. The mandatory requirements for those training programs are set forth in the main body of 29 CFR 1910.120 and 1926.65. The addition of a non-mandatory Appendix E to these sections will provide supplementary information that can be used by employers for training program development directed toward training those employees engaged in hazardous waste operations and emergency response activities within the scope of 29 CFR 1910.120 or 1926.65.

**EFFECTIVE DATE:** The effective date for this notice is September 21, 1994.

**ADDRESSES:** There are no written responses required in this notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–8151.

**SUPPLEMENTARY INFORMATION:**

*Regulatory history.* On October 17, 1986, former President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499). As part of SARA, the Secretary of Labor (the Secretary) was directed to issue an interim final rule within 60 days after the date of enactment of SARA, which was to provide not less protection for employees engaged in covered hazardous waste operations than the protection contained in two specified documents. Those two documents were the Environmental Protection Agency's (EPA) "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA ORDER 1440.2), dated 1981, and the existing Occupational Safety and Health Administration (OSHA) standards under Subpart C or 29 CFR part 1926, OSHA's Construction Industry Safety and Health Standards. OSHA published an interim final rule as directed in the **Federal Register** on December 19, 1986 (51 FR 45654).

In section 126 of SARA, the Congress also directed the Secretary to issue, within one year after the date of enactment of SARA, a final standard under section 6(b) of the Occupational Safety and Health Act of 1970 for the health and safety of employers engaged in hazardous waste operations and emergency response. SARA also indicated that certain specific areas of employee protection, in particular employee training, were relevant to protect employees engaged in hazardous waste operations.

OSHA issued a proposed rule on hazardous waste operations and emergency including provisions for training on August 10, 1987 (52 FR 29620). Public hearings on the proposed rule were held during October 1987. As a result of that proposed rule OSHA published a permanent final rule for hazardous waste operations and emergency response (HAZWOPER) on March 6, 1989 (54 FR 9294). That permanent final rule became effective on March 6, 1990.

In related action, on December 22, 1987, as part of an omnibus budget reconciliation bill (Pub. L. 100–202), the language of SARA was amended. The amendment addressed section 126(d)(3) of SARA. Section 126(d)(3) of SARA reads as follows before the amendment:

(d) *Specific Training Standards.* -- * * *

(3) *Certification; Enforcement.* -- Such training standards shall contain provisions for certifying that general site workers, on-site managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous water operations covered by the standard.

The amendment to section 126(d)(3) contained in Pub. L. 100-202 added the following language to the end of paragraph (d)(3):

That section 126(d)(3) of SARA is amended by adding a new sentence at the end thereof as follows: The certification procedures shall be no less comprehensive than those adopted by the Environmental Protection Agency in its Model Accreditation Plan for Asbestos Abatement Training as required under the Asbestos Hazard Emergency Response Act of 1986.

In response to the amendment, OSHA on January 26, 1990, issued a Notice of Proposed Rulemaking (NPRM) (55 FR 2776) addressing the accreditation of training programs for hazardous waste operations.

Since January, 1990, OSHA has been working to develop a final rule addressing the accreditation of certain training programs required in 29 CFR 1910.120 and 29 CFR 1926.65. OSHA will complete shortly action on that final rule.

On June 30, 1992, OSHA republished 29 CFR 1910.120 in 29 CFR Part 1926 as §1926.65 at the request of the OSHA Advisory Committee on Construction Safety and Health (ACCSH). This republication codified most of the requirements affecting construction activities in one part of the CFR for the convenience of construction industry employers and employees.

The most recent action on this rule concerns the development of the non-mandatory appendix to be added as Appendix E to §1910.120. This action took place during the September 30, 1993 meeting of ACCSH held in Washington, DC. As part of the Advisory Committee's action, a work group chaired by Mr. John Moran, Director of Safety and Health for the Laborers' Health and Safety Fund made specific recommendations to the full advisory committee concerning OSHA's proposed 29 CFR 1910.121 rulemaking. The first recommendation of the work group was, "that OSHA promptly issue a non-mandatory appendix to §1910.120, establishing minimum training curriculum guidelines and minimum training provider guidelines (ACCSH Tr. pg. 148, lines 22–25)." Mr. Moran made a formal motion that the ACCSH recommend, "the prompt issuance of a non-mandatory appendix to §1910.120 which contains guidelines for minimum training curriculum, and that minimum training provider requirements to meet the training standards established in 120 (ACCSH Tr. pg. 152, lines 5–10)." The motion was passed unanimously (ACCSH Tr. pg. 159, lines 3–11). The formal report containing the recommendations developed by the work group was presented to the Assistant Secretary by the ACCSH on October 1, 1993.

The report included a December, 1991 document titled, "*Minimum Criteria for Worker Health and Safety Training for Hazardous Waste Operations and Emergency Response.*" The National Institute of Environmental Health Sciences (NIEHS) Training Grant

Technical Workshop on Training Quality developed the document during a technical workshop on training quality. The workshop, "Minimum Criteria for Worker Health and Safety Training for Hazardous Waste Operations and Emergency Response was held March 22–24, 1990 in Washington, DC and was sponsored by NIEHS. Approximately 60 individuals from labor, industry and the government, including representatives from OSHA participated in the workshop.

The report recommends that,

OSHA should promptly issue a non-mandatory appendix to 29 CFR 1910.120 which provides guidelines as to minimum training curriculum and training provider requirements for those training activities mandated by the 1910.120 standard. It is our recommendation that this appendix be essentially the NIEHS National Technical Workshop consensus document referred to in the BACKGROUND above and which is appended to this report. [1]

The ACCSH recommendation to the Assistant Secretary suggested that the non-mandatory appendix address two topics. First, ACCSH recommended that the appendix should provide guidelines as to the minimum training curriculum for those training activities mandated by §1910.120. Second, ACCSH recommended that the appendix should provide guidelines as to the minimum training provider requirements for those training activities mandated by §1910.120.

*Non-mandatory Appendix E on Training.* Separate from the ACCSH recommendations, several individuals suggested that during the interim period prior to issuing a final rule on training accreditation, OSHA should add a non-mandatory appendix to 29 CFR 1910.120 and 29 CFR 1926.65 that would provide guidance to employers for developing effective training programs. The training provisions of these two standards are stated in performance oriented language in paragraph (e) for hazardous waste site workers, in paragraph (p)(7) for treatment, storage, and disposal facility workers, and in paragraph (q)(6) for emergency response workers.

OSHA uses non-mandatory appendices for a number of purposes such as to provide non-regulatory guidance to employees and employers for the purpose of complying with various OSHA regulations or to assist them in developing more effective safety and health operations. They may also be an amplification of interpretive information that is included in the preamble discussions of rulemakings when they are published in the Federal Register.

It is often brought to OSHA's attention that the useful interpretive information included in preamble discussions addressing OSHA's standards becomes less accessible when rules and regulations are published later in the Code of Federal Regulations. It has been suggested that having the most important of this type of information available in the same publication as the codified text of a rule would make compliance decision making in the workplace easier.

Also non-mandatory appendices provide a non-regulatory mechanism to keep employer and employee populations aware of new technical information that becomes available to the agency subsequent to the issuance of a standard. These new technologies and new types of information may be of assistance to employer and employee populations in complying with the regulatory text to which the appendix is attached.

*Training provider criteria.* OSHA has reviewed the training provider criteria suggested in the "*Minimum Criteria for Worker Health and Safety Training for Hazardous Waste Operations and Emergency Response.*" OSHA is considering fully the issue in the final rule on certification of training programs. Consequently there is no need to insert a non-mandatory appendix on this subject. In the interim, OSHA believes that the standard provides sufficient guidance on the qualifications of instructors and that additional information in an appendix format is unnecessary.

*Training curriculum guidelines.* The document that the ACCSH recommended that OSHA use as the training guidelines to be placed in the non-mandatory appendix is titled, "*Minimum Criteria for Worker Health and Safety Training for Hazardous Waste Operations and Emergency Response.*" It was developed to report the results of a technical workshop on training quality held March 22–24, 1990 in Washington, DC. The meeting was sponsored by the National Institute of Environmental Health Sciences (NIEHS).

NIEHS employee training program grantees identified a need to establish criteria for determining the quality of employee health and safety training programs. This was believed by the workshop to be especially critical for meeting the training requirements of the Occupational Safety and Health Administration (OSHA) rule for hazardous waste operations and emergency response (29 CFR 1910.120). The NIEHS employee training program grantees planned a workshop to identify, evaluate, discuss and make recommendations on training quality issues in this area. A planning committee met twice to develop a draft discussion document for the workshop's deliberations. The workshop brought together representatives from each of the NIEHS grantees, and invited experts from management, labor, academia, and government. A balance of such representations was sought for each of the workshop's five sub-sessions. The sub-sessions topics included the following:

1. General Criteria.
2. General hazardous waste operations and site-specific training.
3. RCRA-treatment, storage, and disposal (TSD) sites.
4. Emergency response.
5. Guidelines for accreditation.

At the closing plenary, a draft final report from the workshop was sent out for a review by participants. Comments offered during the closing plenary and for a period after the meeting were received and included as appropriate in the final document. The report represents the views of the technical experts rather than an official position by any agency, including NIEHS.

NIEHS is authorized under the Superfund Amendments and Reauthorization Act of 1986 (SARA) to award grants to nonprofit organizations that demonstrate experience in implementing and operating employee health and safety training and education programs and that demonstrate the ability to reach and involve in training programs target populations ow employees who are or will be engaged in hazardous materials waste removal, containment, or emergency response operations. The grantees who attended the conference met the requirements of and participation in the NIEHS program.

OSHA has reviewed the guidelines. Overall they would lead to a highly effective training program. Following them would certainly meet the training requirements of §1910.120 and §1926.65 as a general matter. The detailed guidance they present would be helpful to trainers and employers and would lead to better training of employees. Accordingly OSHA is publishing them as a non-mandatory Appendix E to those standards.

However, the legal requirements are set forth in the body of the standards. These require site-specific elements that of course can not be covered in general guidelines. In addition, some of the

[1] Memorandum to Advisory Committee on Construction Safety and Health (ACCSH) from John B. Moran, Chair, Accreditation Work Group, ACCSH containing the Accreditation Work Group Report dated October 1, 1993 (pg. 4).

guidelines go beyond the clear requirements of the regulatory text in paragraphs (a) to (q). In those cases, employers would only be cited if the employee's training did not meet the requirements of paragraphs (a) through (q). Accordingly, Appendix E is not called "minimum criteria" as ACCSH entitled them. In addition, there are other training curriculum resources available that can provide additional guidance to individuals preparing training programs. Therefore, these appendices are not only based upon the NIEHS document but also upon other training program guidance documents. OSHA has utilized documents developed by the National Fire Protection Association, the International Association of Fire Service Instructors, and others to supplement the guidance provided in the NIEHS document.

*Technical Amendments to Appendix B.* It has been brought to the attention of OSHA that certain references made to National Fire Protection Association standards in Appendix B to §1910.120 and §1926.65 are outdated. OSHA makes reference to NFPA 1991, NFPA 1992, and NFPA 1993 as standards that were under development at the time 29 CFR 1910.120 was published. These references are outdated because the NFPA standards referred to in the existing text are no longer "under development" but were published in 1990 as voluntary consensus standards by NFPA.

The revisions to Appendix B of §1910.120 and Appendix B of §1926.65 that are contained in this notice recognize the adoption of these NFPA standards. The revisions correct editorially the text of these appendices to recognize the current status of the referenced NFPA standards.

This document makes technical amendments and adds a non-mandatory appendix for informational purposes that do not change regulatory requirements. Accordingly, the agency finds that notice and comments are unnecessary pursuant to the Administrative Procedures Act, 5 U.S.C. 553(b) and according to OSHA procedural rules in 29 CFR 1911.5.

## Authority

This document was prepared under the direction of Joseph Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington D.C. 20210. Pursuant to section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (Public Law 99–499, 100 Stat. 1690 as amended by Public Law 100–202, section 101(f), 101 Stat. 1329–198, 29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedures Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9–83 (48 FR 35736), §1910.120 of 29 CFR Part 1910 is amended as set forth below.

Signed at Washington, DC this 12th day of August, 1994.

**Joseph A. Dear**

*Assistant Secretary of Labor*

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart H continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.103, 1910.106, 1910.107, 1910.108, 1910.109, 1910.110, 1910.111 and 1910.119 are also issued under 29 CFR part 1911.

Section 1910.119 is also issued under Sec. 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549, Nov. 15, 1990, reprinted at 29 U.S.C. 655 Note (Sup. 1991).

Section 1910.120 is also issued under Sec. 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), 5 U.S.C. 553, and 29 CFR part 1911.

2. The last two paragraphs of *Appendix B to §1910.120—General Description and Discussion of the Levels of Protection and Protective Gear* are revised to read as follows:

**Appendix B to §1910.120—General Description and Discussion of the Levels of Protection and Protective Gear * * ***

**Note: * * ***

As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association (NFPA) has developed standards on chemical protective clothing. The standards that have been adopted by include:

NFPA 1991—Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing).

NFPA 1992—Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing).

NFPA 1993—Standard on Liquid Splash-Protective Suits for Non-emergency, Non-flammable Hazardous Chemical Situations (EPA Level B Protective Clothing).

These standards apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements are labelled as compliant with the appropriate standard. It is recommended that chemical protective suits that meet these standards be used.

3. A new non-mandatory appendix, Appendix E, is added to 29 CFR 1910.120 to read as follows:

**Appendix E to §1910.120—Training Curriculum Guidelines.**

The following non-mandatory general criteria may be used for assistance in developing site-specific training curriculum used to meet the training requirements of 29 CFR 1910.120(e); 29 CFR 1910.120(p)(7), (p)(8)(iii); and 29 CFR 1910.120(q)(6), (q)(7), and (q)(8). These are generic guidelines and they are not presented as a complete training curriculum for any specific employer. Site-specific training programs must be developed on the basis of a needs assessment of the hazardous waste site, RCRA/TSDF, or emergency response operation in accordance with 29 CFR 1910.120.

It is noted that the legal requirements are set forth in the regulatory text of §1910.120. The guidance set forth here presents a highly effective program that in the areas covered would meet or exceed the regulatory requirements. In addition, other approaches could meet the regulatory requirements.

*Suggested General Criteria*

*Definitions:*

"Competent" means possessing the skills, knowledge, experience, and judgment to perform assigned tasks or activities satisfactorily as determined by the employer.

"Demonstration" means the showing by actual use of equipment or procedures.

"Hands-on training" means training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.

"Initial training" means training required prior to beginning work.

"Lecture" means an interactive discourse with a class lead by an instructor.

"Proficient" means meeting a stated level of achievement.

"Site-specific" means individual training directed to the operations of a specific job site.

"Training hours" means the number of hours devoted to lecture, learning activities, small group work sessions, demonstration, evaluations, or hands-on experience.

*Suggested core criteria:*

1. *Training facility.* The training facility should have available sufficient resources, equipment, and site locations to perform didactic and hands-on training when appropriate. Training facilities should have sufficient organization, support staff, and services to conduct training in each of the courses offered.

2. *Training Director.* Each training program should be under the direction of a training director who is responsible for the program. The Training Director should have a minimum of two years of employee education experience.

3. *Instructors.* Instructors should be deem competent on the basis of previous documented experience in their area of instruction, successful completion of a "train-the-trainer" program specific to the topics they will teach, and an evaluation of

instructional competence by the Training Director.

Instructors should be required to maintain professional competency by participating in continuing education or professional development programs or by completing successfully an annual refresher course and having an annual review by the Training Director.

The annual review by the Training Director should include observation of an instructor's delivery, a review of those observations with the trainer, and an analysis of any instructor or class evaluations completed by the students during the previous year.

4. *Course materials.* The Training Director should approve all course materials to be used by the training provider. Course materials should be reviewed and updated at least annually. Materials and equipment should be in good working order and maintained properly.

All written and audio-visual materials in training curricula should be peer reviewed by technically competent outside reviewers or by a standing advisory committee.

Reviews should possess expertise in the following disciplines were applicable: occupational health, industrial hygiene and safety, chemical/environmental engineering, employee education, or emergency response. One or more of the peer reviewers should be a employee experienced in the work activities to which the training is directed.

5. *Students.* The program for accepting students should include:

a. Assurance that the student is or will be involved in work where chemical exposures are likely and that the student possesses the skills necessary to perform the work.

b. A policy on the necessary medical clearance.

6. *Ratios.* Student-instructor ratios should not exceed 30 students per instructor. Hands-on activity requiring the use of personal protective equipment should have the following student-instructor ratios. For Level C or Level D personal protective equipment the ratio should be 10 students per instructor. For Level A or Level B personal protective equipment the ratio should be 5 students per instructor.

7. *Proficiency assessment.* Proficiency should be evaluated and documented by the use of a written assessment and a skill demonstration selected and developed by the Training Director and training staff. The assessment and demonstration should evaluate the knowledge and individual skills developed in the course of training. The level of minimum achievement necessary for proficiency shall be specified in writing by the Training Director.

If a written test is used, there should be a minimum of 50 questions. If a written test is used in combination with a skills demonstration, a minimum of 25 questions should be used. If a skills demonstration is used, the tasks chosen and the means to rate successful completion should be fully documented by the Training Director.

The content of the written test or of the skill demonstration shall be relevant to the objectives of the course. The written test and skill demonstration should be updated as necessary to reflect changes in the curriculum and any update should be approved by the Training Director.

The proficiency assessment methods, regardless of the approach or combination of approaches used, should be justified, documented and approved by the Training Director.

The proficiency of those taking the additional courses for supervisors should be evaluated and documented by using proficiency assessment methods acceptable to the Training Director. These proficiency assessment methods must reflect the additional responsibilities borne by supervisory personnel in hazardous waste operations or emergency response.

8. *Course certificate.* Written documentation should be provided to each student who satisfactorily completes the training course. The documentation should include:

a. Student's name.

b. Course title.

c. Course date.

d. Statement that the student has successfully completed the course.

e. Name and address of the training provider.

f. An individual identification number for the certificate.

g. List of the levels of personal protective equipment used by the student to complete the course.

This documentation may include a certificate and an appropriate wallet-sized laminated card with a photograph of the student and the above information. When such course certificate cards are used, the individual identification number for the training certificate should be shown on the card.

9. *Recordkeeping.* Training providers should maintain records listing the dates courses were presented, the names of the individual course attenders, the names of those students successfully completing each course, and the number of training certificates issued to each successful student. These records should be maintained for a minimum of five years after the date an individual participated in a training program offered by the training provider. These records should be available and provided upon the student's request or as mandated by law.

10. *Program quality control.* The Training Director should conduct or direct an annual written audit of the training program. Program modifications to address deficiencies, if any, should be documented, approved, and implemented by the training provider. The audit and the program modification documents should be maintained at the training facility.

*Suggested Program Quality Control Criteria*

Factors listed here are suggested criteria for determining the quality and appropriateness of employee health and safety training for hazardous waste operations and emergency response.

*A. Training Plan.*

Adequacy and appropriateness of the training program's curriculum development, instructor training, distribution of course materials, and direct student training should be considered, including

1. The duration of training, course content, and course schedules/agendas;

2. The different training requirements of the various target populations, as specified in the appropriate generic training curriculum;

3. The process for the development of curriculum, which includes appropriate technical input, outside review, evaluation, program pretesting.

4. The adequate and appropriate inclusion of hands-on, demonstration, and instruction methods;

5. Adequate monitoring of student safety, progress, and performance during the training.

*B. Program management, Training Director, staff, and consultants.*

Adequacy and appropriateness of staff performance and delivering an effective training program should be considered, including

1. Demonstration of the training director's leadership in assuring quality of health and safety training.

2. Demonstration of the competency of the staff to meet the demands of delivering high quality hazardous waste employee health and safety training.

3. Organization charts establishing clear lines of authority.

4. Clearly defined staff duties including the relationship of the training staff to the overall program.

5. Evidence that the training organizational structure suits the needs of the training program.

6. Appropriateness and adequacy of the training methods used by the instructors.

7. Sufficiency of the time committed by the training director and staff to the training program.

8. Adequacy of the ratio of training staff to students.

9. Availability and commitment of the training program of adequate human and equipment resources in the areas of

a. Health effects,

b. Safety,

c. Personal protective equipment (PPE),

d. Operational procedures,

e. Employee protection practices/procedures.

10. Appropriateness of management controls.

11. Adequacy of the organization and appropriate resources assigned to assure appropriate training.

12. In the case of multiple-site training programs, adequacy of satellite centers management.

*C. Training facilities and resources.*

Adequacy and appropriateness of the facilities and resources for supporting the training program should be considered, including,

1. Space and equipment to conduct the training.

2. Facilities for representative hands-on training.

3. In the case of multiple-site programs, equipment and facilities at the satellite centers.

4. Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance.

5. Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action.

6. Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program.

7. Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

*D. Quality control and evaluation.*

Adequacy and appropriateness of quality control and evaluation plans for training programs should be considered, including:

1. A balanced advisory committee and/or competent outside reviewers to give overall policy guidance;

2. Clear and adequate definition of the composition and active programmatic role of the advisory committee or outside reviewers.

3. Adequacy of the minutes or reports of the advisory committee or outside reviewers' meetings or written communication.

4. Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance.

5. Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action.

6. Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program.

7. Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

*E. Students*

Adequacy and appropriateness of the program for accepting students should be considered, including

1. Assurance that the student already possess the necessary skills for their job, including necessary documentation.

2. Appropriateness of methods the program uses to ensure that recruits are capable of satisfactorily completing training.

3. Review and compliance with any medical clearance policy.

*F. Institutional Environment and Administrative Support*

The adequacy and appropriateness of the institutional environment and administrative support system for the training program should be considered, including

1. Adequacy of the institutional commitment to the employee training program.

2. Adequacy and appropriateness of the administrative structure and administrative support.

*G. Summary of Evaluation Questions*

Key questions for evaluating the quality and appropriateness of an overall training program should include the following:

1. Are the program objectives clearly stated?

2. Is the program accomplishing its objectives?

3. Are appropriate facilities and staff available?

4. Is there an appropriate mix of classroom, demonstration, and hands-on training?

5. Is the program providing quality employee health and safety training that fully meets the intent of regulatory requirements?

6. What are the program's main strengths?

7. What are the program's main weaknesses?

8. What is recommended to improve the program?

9. Are instructors instructing according to their training outlines?

10. Is the evaluation tool current and appropriate for the program content?

11. Is the course material current and relevant to the target group?

*Suggested Training Curriculum Guidelines*

The following training curriculum guidelines are for those operations specifically identified in 29 CFR 1910.120 as requiring training. Issues such as qualifications of instructors, training certification, and similar criteria appropriate to all categories of operations addressed in 1910.120 have been covered in the preceding section and are not re-addressed in each of the generic guidelines. Basic core requirements for training programs that are addressed include

1. General Hazardous Waste Operations

2. RCRA operations—Treatment, storage, and disposal facilities.

3. Emergency Response.

*A. General Hazardous Waste Operations and Site-specific Training*

1. *Off-site training.*Training course content for hazardous waste operations, required by 29 CFR 1910.120(e), should include the following topics or procedures:

a. *Regulatory knowledge.*

(1)An review of 29 CFR 1910.120 and the core elements of an occupational safety and health program.

(2)The content of a medical surveillance program as outlined in 29 CFR 1910.120(f).

(3)The content of an effective site safety and health plan consistent with the requirements of 29 CFR 1910.120(b)(4)(ii).

(4)Emergency response plan and procedures as outlined in 29 CFR 1910.38 and 29 CFR 1910.120(l).

(5)Adequate illumination.

(6)Sanitation recommendation and equipment.

(7)Review and explanation of OSHA's hazard-communication standard (29 CFR 1910.1200) and lock-out-tag-out standard (29 CFR 1910.147).

(8)Review of other applicable standards including but not limited to those in the construction standards (29 CFR Part 1926).

(9)Rights and responsibilities of employers and employees under applicable OSHA and EPA laws.

b. *Technical knowledge.*

(1)Type of potential exposures to chemical, biological, and radiological hazards; types of human responses to these hazards and recognition of those responses; principles of toxicology and information about acute and chronic hazards; health and safety considerations of new technology.

(2)Fundamentals of chemical hazards including but not limited to vapor pressure, boiling points, flash points, ph, other physical and chemical properties.

(3)Fire and explosion hazards of chemicals.

(4)General safety hazards such as but not limited to electrical hazards, powered equipment hazards, motor vehicle hazards, walking-working surface hazards, excavation hazards, and hazards associated with working in hot and cold temperature extremes.

(5)Review and knowledge of confined space entry procedures in 29 CFR 1910.146.

(6)Work practices to minimize employee risk from site hazards.

(7)Safe use of engineering controls, equipment, and any new relevant safety technology or safety procedures.

(8)Review and demonstration of competency with air sampling and monitoring equipment that may be used in a site monitoring program.

(9)Container sampling procedures and safeguarding; general drum and container handling procedures including special requirement for laboratory waste packs, shock-sensitive wastes, and radioactive wastes.

(10)The elements of a spill control program.

(11)Proper use and limitations of material handling equipment.

(12)Procedures for safe and healthful preparation of containers for shipping and transport.

(13)Methods of communication including those used while wearing respiratory protection.

c. *Technical skills.*

(1)Selection, use maintenance, and limitations of personal protective equipment including the components and procedures for carrying out a respirator program to comply with 29 CFR 1910.134.

(2)Instruction in decontamination programs including personnel, equipment, and hardware; hands-on training including level A, B, and C ensembles and appropriate decontamination lines; field activities including the donning and doffing of protective equipment to a level commensurate with the employee's anticipated job function and responsibility and to the degree required by potential hazards.

(3)Sources for additional hazard information; exercises using relevant manuals and hazard coding systems.

d. *Additional suggested items.*

(1)A laminated, dated card or certificate with photo, denoting limitations and level of protection for which the employee is trained should be issued to those students successfully completing a course.

(2)Attendance should be required at all training modules, with successful completion of exercises and a final written or oral examination with at least 50 questions.

(3)A minimum of one-third of the program should be devoted to hands-on exercises.

(4)A curriculum should be established for the 8-hour refresher training required by 29 CFR 1910.120(e)(8), with delivery of such courses directed toward those areas of previous training that need improvement or reemphasis.

(5)A curriculum should be established for the required 8-hour training for supervisors. Demonstrated competency in the skills and knowledge provided in a 40-hour course should be a prerequisite for supervisor training.

*2. Refresher training.*

The 8-hour annual refresher training required in 29 CFR 1910.120(e)(8) should be conducted by qualified training providers. Refresher training should include at a minimum the following topics and procedures:

(a)Review of and retraining on relevant topics covered in the 40-hour program, as appropriate, using reports by the students on their work experiences.

(b)Update on developments with respect to material covered in the 40-hour course.

(c)Review of changes to pertinent provisions of EPA or OSHA standards or laws.

(d)Introduction of additional subject areas as appropriate.

(e)Hands-on review of new or altered PPE or decontamination equipment or procedures. Review of new developments in personal protective equipment.

(f)Review of newly developed air and contaminant monitoring equipment.

*3. On-site training.*

a. The employer should provide employees engaged in hazardous waste site activities with information and training prior to initial assignment into their work area, as follows:

(1) The requirements of the hazard communication program including the location and availability of the written program, required lists of hazardous chemicals, and material safety data sheets.

(2) Activities and locations in their work area where hazardous substance may be present.

(3) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearances, or other evidence (sight, sound or smell) of hazardous chemicals being released, and applicable alarms from monitoring devices that record chemical releases.

(4) The physical and health hazards of substances known or potentially present in the work area.

(5) The measures employees can take to help protect themselves from work-site hazards, including specific procedures the employer has implemented.

(6) An explanation of the labeling system and material safety data sheets and how employees can obtain and use appropriate hazard information.

(7) The elements of the confined space program including special PPE, permits, monitoring requirements, communication procedures, emergency response, and applicable lock-out procedures.

b. The employer should provide hazardous waste employees information and training and should provide a review and access to the site safety and plan as follows:

(1) Names of personnel and alternate responsible for site safety and health.

(2) Safety and health hazards present on the site.

(3) Selection, use, maintenance, and limitations of personal protective equipment specific to the site.

(4) Work practices by which the employee can minimize risks from hazards.

(5) Safe use of engineering controls and equipment available on site.

(6) Safe decontamination procedures established to minimize employee contact with hazardous substances, including:

(A) Employee decontamination,

(B) Clothing decontamination, and

(C) Equipment decontamination.

(7) Elements of the site emergency response plan, including:

(A) Pre-emergency planning.

(B) Personnel roles and lines of authority and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures not covered by the site safety and health plan.

(H) Emergency medical treatment and first aid.

(I) Emergency equipment and procedures for handling emergency incidents.

c. The employer should provide hazardous waste employees information and training on personal protective equipment used at the site, such as the following:

(1) PPE to be used based upon known or anticipated site hazards.

(2) PPE limitations of materials and construction; limitations during temperature extremes, heat stress, and other appropriate medical considerations; use and limitations of respirator equipment as well as documentation procedures as outlined in 29 CFR 1910.134.

(3) PPE inspection procedures prior to, during, and after use.

(4) PPE donning and doffing procedures.

(5) PPE decontamination and disposal procedures.

(6) PPE maintenance and storage.

(7) Task duration as related to PPE limitations.

d. The employer should instruct the employee about the site medical surveillance program relative to the particular site, including

(1) Specific medical surveillance programs that have been adapted for the site.

(2) Specific signs and symptoms related to exposure to hazardous materials on the site.

(3) The frequency and extent of periodic medical examinations that will be used on the site.

(4) Maintenance and availability of records.

(5) Personnel to be contacted and procedures to be followed when signs and symptoms of exposures are recognized.

e. The employees will review and discuss the site safety plan as part of the training program. The location of the site safety plan and all written programs should be discussed with employees including a discussion of the mechanisms for access, review, and references described.

*B. RCRA Operations Training for Treatment, Storage and Disposal Facilities.*

1. As a minimum, the training course required in 29 CFR 1910.120 (p) should include the following topics:

(a) Review of the applicable paragraphs of 29 CFR 1910.120 and the elements of the employer's occupational safety and health plan.

(b) Review of relevant hazards such as, but not limited to, chemical, biological, and radiological exposures; fire and explosion hazards; thermal extremes; and physical hazards.

(c) General safety hazards including those associated with electrical hazards, powered equipment hazards, lock-out-tag-out procedures, motor vehicle hazards and walking-working surface hazards.

(d) Confined-space hazards and procedures.

(e) Work practices to minimize employee risk from workplace hazards.

(f) Emergency response plan and procedures including first aid meeting the requirements of paragraph (p)(8).

(g) A review of procedures to minimize exposure to hazardous waste and various type of waste streams, including the materials handling program and spill containment program.

(h) A review of hazard communication programs meeting the requirements of 29 CFR 1910.1200.

(i) A review of medical surveillance programs meeting the requirements of 29 CFR 1910.120(p)(3) including the recognition of signs and symptoms of overexposure to hazardous substance including known synergistic interactions.

(j) A review of decontamination programs and procedures meeting the requirements of 29 CFR 1910.120(p)(4).

(k) A review of an employer's requirements to implement a training program and its elements.

(l) A review of the criteria and programs for proper selection and use of personal protective equipment, including respirators.

(m) A review of the applicable appendices to 29 CFR 1910.120.

(n) Principles of toxicology and biological monitoring as they pertain to occupational health.

(o) Rights and responsibilities of employees and employers under applicable OSHA and EPA laws.

(p) Hands-on exercises and demonstrations of competency with equipment to illustrate the basic equipment principles that may be used during the performance of work duties, including the donning and doffing of PPE.

(q) Sources of reference, efficient use of relevant manuals, and knowledge of hazard coding systems to include information contained in hazardous waste manifests.

(r) At least 8 hours of hands-on training.

(s) Training in the job skills required for an employee's job function and responsibility before they are permitted to participate in or supervise field activities.

2. The individual employer should provide hazardous waste employees with information and training prior to an employee's initial assignment into a work area. The training and information should cover the following topics:

(a) The Emergency response plan and procedures including first aid.

(b) A review of the employer's hazardous waste handling procedures including the materials handling program and elements of the spill containment program, location of spill response kits or equipment, and the names of those trained to respond to releases.

(c) The hazardous communication program meeting the requirements of 29 CFR 1910.1200

(d) A review of the employer's medical surveillance program including the recognition of signs and symptoms of exposure to relevant hazardous substance including known synergistic interactions.

(e) A review of the employer's decontamination program and procedures.

(f) An review of the employer's training program and the parties responsible for that program.

(g) A review of the employer's personal protective equipment program including the proper selection and use of PPE based upon specific site hazards.

(h) All relevant site-specific procedures addressing potential safety and health hazards. This may include, as appropriate, biological and radiological exposures, fire and explosion hazards, thermal hazards, and physical hazards such as electrical hazards, powered equipment hazards, lock-out-tag-out hazards, motor vehicle hazards, and walking-working surface hazards.

(i) Safe use engineering controls and equipment on site.

(j) Names of personnel and alternates responsible for safety and health.

*C. Emergency response training.*

Federal OSHA standards in 29 CFR 1910.120(q) are directed toward private sector emergency responders. Therefore, the guidelines provided in this portion of the appendix are directed toward that employee population. However, they also impact indirectly through State OSHA or USEPA regulations some public sector emergency responders. Therefore, the guidelines provided in this portion of the appendix may be applied to both employee populations.

States with OSHA state plans must cover their employees with regulations at least as effective as the Federal OSHA standards. Public employees in states without approved state OSHA programs covering hazardous waste operations and emergency response are covered by the U.S. EPA under 40 CFR 311, a regulation virtually identical to §1910.120.

Since this is a non-mandatory appendix and therefore not an enforceable standard, OSHA recommends that those employers, employees or volunteers in public sector emergency response organizations outside Federal OSHA jurisdiction consider the following criteria in developing their own training programs. A unified approach to training at the community level between emergency response organizations covered by Federal OSHA and those not covered directly by Federal OSHA can help ensure an effective community response to the release or potential release of hazardous substances in the community.

a. *General considerations.*

Emergency response organizations are required to consider the topics listed in §1910.120(q)(6). Emergency response organizations may use some or all of the following topics to supplement those mandatory topics when developing their response training programs. Many of the topics would require an interaction between the response provider and the individuals responsible for the site where the response would be expected.

(1) Hazard recognition, including:

(A) Nature of hazardous substances present,

(B) Practical applications of hazard recognition, including presentations on biology, chemistry, and physics.

(2) Principles of toxicology, biological monitoring, and risk assessment.

(3) Safe work practices and general site safety.

(4) Engineering controls and hazardous waste operations.

(5) Site safety plans and standard operating procedures.

(6) Decontamination procedures and practices.

(7) Emergency procedures, first aid, and self-rescue.

(8) Safe use of field equipment.

(9) Storage, handling, use and transportation of hazardous substances.

(10) Use, care, and limitations of personal protective equipment.

(11) Safe sampling techniques.

(12) Rights and responsibilities of employees under OSHA and other related laws concerning right-to-know, safety and health, compensations and liability.

(13) Medical monitoring requirements.

(14) Community relations.

b. *Suggested criteria for specific courses.*

(1) *First responder awareness level.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1910.120(q).

(B) Hands-on experience with the U.S. Department of Transportation's Emergency Response Guidebook (ERG) and familiarization with OSHA standard 29 CFR 1910.1201.

(C) Review of the principles and practices for analyzing an incident to determine both the hazardous substances present and the basic hazard and response information for each hazardous substance present.

(D) Review of procedures for implementing actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including emergency notification procedures and follow-up communications.

(E) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(F) Awareness and knowledge of the competencies for the First Responder at the Awareness Level covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(2) *First responder operations level.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1910.120(q).

(B) Hands-on experience with the U.S. Department of Transportation's Emergency Response Guidebook (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, and other relevant sources of information addressing hazardous substance releases. Familiarization with OSHA standard 29 CFR 1910.1201.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles, the types and selection of the appropriate defensive strategy for containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practice of personnel and equipment decontamination.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the First Responder at the Operations Level covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(3) *Hazardous materials technician.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1910.120(q).

(B) Hands-on experience with written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with OSHA standard 29 CFR 1910.1201.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles involved in the release, the appropriate strategy for approaching release sites and containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practices of establishing exposure zones, proper decontamination and medical surveillance stations and procedures.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the Hazardous Materials Technician covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(4) *Hazardous materials specialist.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1910.120(q).

(B) Hands-on experience with retrieval and use of written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with OSHA standard 29 CFR 1910.1201.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, and the likely behavior of the hazardous substance and its container, vessel, or vehicle.

(D) Review of the principles and practices for identification of the types of hazardous substance transportation containers, vessels and vehicles involved in the release; selecting and using the various types of equipment available for plugging or patching transportation containers, vessels or vehicles; organizing and directing the use of multiple teams of hazardous material technicians and selecting the appropriate strategy for approaching release sites and containing or stopping the release.

(E) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, including knowledge of the available public and private response resources, establishment of an incident command post, direction of hazardous material technician teams, and extended emergency notification procedures and follow-up communications.

(F) Review of the principles and practice for proper selection and use of personal protective equipment.

(G) Review of the principles and practices of establishing exposure zones and proper decontamination, monitoring and medical surveillance stations and procedures.

(H) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(I) Awareness and knowledge of the competencies for the Off-site Specialist Employee covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(5) *Incident commander.*

The incident commander is the individual who, at any one time, is responsible for and in control of the response effort. This individual is the person responsible for the direction and coordination of the response effort. An incident commander's position should be occupied by the most senior, appropriately trained individual present at the response site. Yet, as necessary and appropriate by the level of response provided, the position may be occupied by many individuals during a particular response as the need for greater authority, responsibility, or training increases. It is possible for the first responder at the awareness level to assume the duties of incident commander until a more senior and appropriately trained individual arrives at the response site.

Therefore, any emergency responder expected to perform as an incident commander should be trained to fulfill the obligations of the position at the level of response they will be providing including the following:

(A) Ability to analyze a hazardous substance incident to determine the magnitude of the response problem.

(B) Ability to plan and implement an appropriate response plan within the capabilities of available personnel and equipment.

(C) Ability to implement a response to favorably change the outcome of the incident in a manner consistent with the local emergency response plan and the organization's standard operating procedures.

(D) Ability to evaluate the progress of the emergency response to ensure that the response objectives are being met safely, effectively, and efficiently.

(E) Ability to adjust the response plan to the conditions of the response and to notify higher levels of response when required by the changes to the response plan.

## PART 1926—CONSTRUCTION SAFETY AND HEALTH STANDARDS

4. The authority citation for Subpart D of Part 1926 is revised to read as follows:

**Authority**: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.62 issued under sec. 1031 of the Housing and Community Development Act of 1992 (sec. 1031, title X, 106 Stat. 3924 (42 U.S.C. 4853).

Section 1926.65 also issued under Sec. 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), 5 U.S.C. 553, and 29 CFR part 1911.

5. The last two paragraphs of *Appendix B to §1926.65—General Description and Discussion of the Levels of Protection and Protective Gear* are revised to read as follows:

**Appendix B to §1926.65—General Description and Discussion of the Levels of Protection and Protective Gear * * ***

**Note:** * * *

As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association (NFPA) has developed standards on chemical protective clothing. The standards that have been adopted by include:

NFPA 1991—Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing).

NFPA 1992—Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing).

NFPA 1993—Standard on Liquid Splash-Protective Suits for Non-emergency, Non-flammable Hazardous Chemical Situations (EPA Level B Protective Clothing).

These standards apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements are labelled as compliant with the appropriate standard. It is recommended that chemical protective suits that meet these standards be used.

6. A new non-mandatory appendix is added to 29 CFR 1926.65 to read as follows:

**Appendix to §1926.65—Training Curriculum Guidelines**

The following non-mandatory general criteria may be used for assistance in developing site-specific training curriculum used to meet the training requirements of 29 CFR 1926.65(e); 29 CFR 1926.65(p)(7), (p)(8)(iii); and 29 CFR 1926.65(q)(6), (q)(7), and (q)(8). These are generic guidelines and they are not presented as a complete training curriculum for any specific employer. Site-specific training programs must be developed on the basis of a needs assessment of the hazardous waste site, RCRA/TSDF, or emergency response operation in accordance with 29 CFR 1926.65.

*It is noted that* the legal requirements are set forth in the regulatory text of §1926.65. The guidance set forth here presents a highly effective program that in the areas covered would meet or exceed the regulatory requirements. In addition, other approaches could meet the regulatory requirements.

*Suggested General Criteria*

*Definitions*:

"Competent" means possessing the skills, knowledge, experience, and judgment to perform assigned tasks or activities satisfactorily as determined by the employer.

"Demonstration" means the showing by actual use of equipment or procedures.

"Hands-on training" means training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.

"Initial training" means training required prior to beginning work.

"Lecture" means an interactive discourse with a class lead by an instructor.

"Proficient" means meeting a stated level of achievement.

"Site-specific" means individual training directed to the operations of a specific job site.

"Training hours" means the number of hours devoted to lecture, learning activities, small group work sessions, demonstration, evaluations, or hands-on experience.

*Suggested Core Criteria:*

1. *Training facility.* The training facility should have available sufficient resources, equipment, and site locations to perform didactic and hands-on training when appropriate. Training facilities should have sufficient organization, support staff, and services to conduct training in each of the courses offered.

2. *Training Director.* Each training program should be under the direction of a training director who is responsible for the program. The Training Director should have a minimum of two years of employee education experience.

3. *Instructors.* Instructors should be deem competent on the basis of previous documented experience in their area of instruction, successful completion of a "train-the-trainer" program specific to the topics they will teach, and an evaluation of instructional competence by the Training Director.

Instructors should be required to maintain professional competency by participating in continuing education or professional development programs or by completing successfully an annual refresher course and having an annual review by the Training Director.

The annual review by the Training Director should include observation of an instructor's delivery, a review of those observations with the trainer, and an analysis of any instructor or class evaluations completed by the students during the previous year.

4. *Course materials.* The Training Director should approve all course materials to be used by the training provider. Course materials should be reviewed and updated at least annually. Materials and equipment should be in good working order and maintained properly.

All written and audio-visual materials in training curricula should be peer reviewed by technically competent outside reviewers or by a standing advisory committee.

Reviews should possess expertise in the following disciplines were applicable: occupational health, industrial hygiene and safety, chemical/environmental engineering, employee education, or emergency response. One or more of the peer reviewers should be a employee experienced in the work activities to which the training is directed.

5. *Students.* The program for accepting students should include:

a. Assurance that the student is or will be involved in work where chemical exposures are likely and that the student possesses the skills necessary to perform the work.

b. A policy on the necessary medical clearance.

6. *Ratios.* Student-instructor ratios should not exceed 30 students per instructor. Hands-on activity requiring the use of personal protective equipment should have the following student-instructor ratios. For Level C or Level D personal protective equipment the ratio should be 10 students per instructor. For Level A or Level B personal protective equipment the ratio should be 5 students per instructor.

7. *Proficiency assessment.* Proficiency should be evaluated and documented by the use of a written assessment and a skill demonstration selected and developed by the Training Director and training staff. The assessment and demonstration should evaluate the knowledge and individual skills developed in the course of training. The level of minimum achievement necessary for proficiency shall be specified in writing by the Training Director.

If a written test is used, there should be a minimum of 50 questions. If a written test is used in combination with a skills demonstration, a minimum of 25 questions should be used. If a skills demonstration is used, the tasks chosen and the means to rate successful completion should be fully documented by the Training Director.

The content of the written test or of the skill demonstration shall be relevant to the objectives of the course. The written test and skill demonstration should be updated as necessary to reflect changes in the curriculum and any update should be approved by the Training Director.

The proficiency assessment methods, regardless of the approach or combination of approaches used, should be justified, document and approved by the Training Director.

The proficiency of those taking the additional courses for supervisors should be evaluated and document by using proficiency assessment methods acceptable to the Training Director. These proficiency assessment methods must reflect the additional responsibilities borne by supervisory personnel in hazardous waste operations or emergency response.

8. *Course certificate.* Written documentation should be provided to each student who satisfactorily completes the training course. The documentation should include:

a. Student's name.

b. Course title.

c. Course date.

d. Statement that the student has successfully completed the course.

e. Name and address of the training provider.

f. An individual identification number for the certificate.

g. List of the levels of personal protective equipment used by the student to complete the course.

This documentation may include a certificate and an appropriate wallet-sized laminated card with a photograph of the student and the above information. When such course certificate cards are used, the individual identification number for the training certificate should be shown on the card.

9. *Recordkeeping.* Training providers should maintain records listing the dates courses were presented, the names of the individual course attenders, the names of those students successfully completing each course, and the number of training certificates issued to each successful student. These records should be maintained for a minimum of five years after the date an individual participated in a training program offered by the training provider. These records should be available and provided upon the student's request or as mandated by law.

10. *Program quality control.* The Training Director should conduct or direct an annual written audit of the training program. Program modifications to address deficiencies, if any, should be documented, approved, and implemented by the training provider. The audit and the program modification documents should be maintained at the training facility.

*Suggested Program Quality Control Criteria*

Factors listed here are suggested criteria for determining the quality and appropriateness of employee health and safety training for hazardous waste operations and emergency response.

*A. Training Plan.*

Adequacy and appropriateness of the training program's curriculum development, instructor training, distribution of course materials, and direct student training should be considered, including

1. The duration of training, course content, and course schedules/agendas;

2. The different training requirements of the various target populations, as specified in the appropriate generic training curriculum;

3. The process for the development of curriculum, which includes appropriate technical input, outside review, evaluation, program pretesting.

4. The adequate and appropriate inclusion of hands-on, demonstration, and instruction methods;

5. Adequate monitoring of student safety, progress, and performance during the training.

*B. Program management, Training Director, staff, and consultants.*

Adequacy and appropriateness of staff performance and delivering an effective training program should be considered, including

1. Demonstration of the training director's leadership in assuring quality of health and safety training.

2. Demonstration of the competency of the staff to meet the demands of delivering high quality hazardous waste employee health and safety training.

3. Organization charts establishing clear lines of authority.

4. Clearly defined staff duties including the relationship of the training staff to the overall program.

5. Evidence that the training organizational structure suits the needs of the training program.

6. Appropriateness and adequacy of the training methods used by the instructors.

7. Sufficiency of the time committed by the training director and staff to the training program.

8. Adequacy of the ratio of training staff to students.

9. Availability and commitment of the training program of adequate human and equipment resources in the areas of

a. Health effects,
b. Safety,
c. Personal protective equipment (PPE),
d. Operational procedures,
e. Employee protection practices/procedures.

10. Appropriateness of management controls.

11. Adequacy of the organization and appropriate resources assigned to assure appropriate training.

12. In the case of multiple-site training programs, adequacy of satellite centers management.

*C. Training facilities and resources.*

Adequacy and appropriateness of the facilities and resources for supporting the training program should be considered, including,

1 Space and equipment to conduct the training.

2. Facilities for representative hands-on training.

3. In the case of multiple-site programs, equipment and facilities at the satellite centers.

4. Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance.

5. Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action.

6. Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program.

7. Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

*D. Quality control and evaluation.*

Adequacy and appropriateness of quality control and evaluation plans for training programs should be considered, including:

1. A balanced advisory committee and/or competent outside reviewers to give overall policy guidance;

2. Clear and adequate definition of the composition and active programmatic role of the advisory committee or outside reviewers.

3. Adequacy of the minutes or reports of the advisory committee or outside reviewers' meetings or written communication.

4. Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance.

5. Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action.

6. Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program.

7. Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

*E. Students*

Adequacy and appropriateness of the program for accepting students should be considered, including

1. Assurance that the student already possess the necessary skills for their job, including necessary documentation.

2. Appropriateness of methods the program uses to ensure that recruits are capable of satisfactorily completing training.

3. Review and compliance with any medical clearance policy.

*F. Institutional Environment and Administrative Support*

The adequacy and appropriateness of the institutional environment and administrative support system for the training program should be considered, including

1. Adequacy of the institutional commitment to the employee training program.

2. Adequacy and appropriateness of the administrative structure and administrative support.

*G. Summary of Evaluation Questions*

Key questions for evaluating the quality and appropriateness of an overall training program should include the following:

1. Are the program objectives clearly stated?

2. Is the program accomplishing its objectives?

3. Are appropriate facilities and staff available?

4. Is there an appropriate mix of classroom, demonstration, and hands-on training?

5. Is the program providing quality employee health and safety training that fully meets the intent of regulatory requirements?

6. What are the program's main strengths?

7. What are the program's main weaknesses?

8. What is recommended to improve the program?

9. Are instructors instructing according to their training outlines?

10. Is the evaluation tool current and appropriate for the program content?

11. Is the course material current and relevant to the target group?

*Suggested Training Curriculum Guidelines*

The following training curriculum guidelines are for those operations specifically identified in 29 CFR 1926.65 as requiring training. Issues such as qualifications of instructors, training certification, and similar criteria appropriate to all categories of operations addressed in 1926.65 have been covered in the preceding section and are not re-addressed in each of the generic guidelines. Basic core requirements for training programs that are addressed include

1. General Hazardous Waste Operations

2. RCRA operations—Treatment, storage, and disposal facilities.

3. Emergency Response.

*A. General Hazardous Waste Operations and Site-specific Training*

1. *Off-site training.*

Minimum training course content for hazardous waste operations, required by 29 CFR 1926.65(e), should include the following topics or procedures:

a. *Regulatory knowledge.*

(1) A review of 29 CFR 1926.65 and the core elements of an occupational safety and health program.

(2) The content of a medical surveillance program as outlined in 29 CFR 1926.65(f).

(3) The content of an effective site safety and health plan consistent with the requirements of 29 CFR 1926.65(b)(4)(ii).

(4) Emergency response plan and procedures as outlined in 29 CFR 1910.38 and 29 CFR 1926.65(l).

(5) Adequate illumination.

(6) Sanitation recommendation and equipment.

(7) Review and explanation of OSHA's hazard-communication standard (29 CFR 1910.1200) and lock-out-tag-out standard (29 CFR 1910.147).

(8) Review of other applicable standards including but not limited to those in the construction standards (29 CFR Part 1926).

(9) Rights and responsibilities of employers and employees under applicable OSHA and EPA laws.

b. *Technical knowledge.*

(1) Type of potential exposures to chemical, biological, and radiological hazards; types of human responses to these hazards and recognition of those responses; principles of toxicology and information about acute and chronic hazards; health and safety considerations of new technology.

(2) Fundamentals of chemical hazards including but not limited to vapor pressure, boiling points, flash points, ph, other physical and chemical properties.

(3) Fire and explosion hazards of chemicals.

(4) General safety hazards such as but not limited to electrical hazards, powered equipment hazards, motor vehicle hazards, walking-working surface hazards, excavation hazards, and hazards associated with working in hot and cold temperature extremes.

(5) Review and knowledge of confined space entry procedures in 29 CFR 1910.146.

(6) Work practices to minimize employee risk from site hazards.

(7) Safe use of engineering controls, equipment, and any new relevant safety technology or safety procedures.

(8) Review and demonstration of competency with air sampling and monitoring equipment that may be used in a site monitoring program.

(9) Container sampling procedures and safeguarding; general drum and container handling procedures including special requirement for laboratory waste packs, shock-sensitive wastes, and radioactive wastes.

(10) The elements of a spill control program.

(11) Proper use and limitations of material handling equipment.

(12) Procedures for safe and healthful preparation of containers for shipping and transport.

(13) Methods of communication including those used while wearing respiratory protection.

c. *Technical skills.*

(1) Selection, use maintenance, and limitations of personal protective equipment including the components and procedures for carrying out a respirator program to comply with 29 CFR 1910.134.

(2) Instruction in decontamination programs including personnel, equipment, and hardware; hands-on training including level A, B, and C ensembles and appropriate decontamination lines; field activities including the donning and doffing of

protective equipment to a level commensurate with the employee's anticipated job function and responsibility and to the degree required by potential hazards.

(3) Sources for additional hazard information; exercises using relevant manuals and hazard coding systems.

d. *Additional suggested items.*

(1) A laminated, dated card or certificate with photo, denoting limitations and level of protection for which the employee is trained should be issued to those students successfully completing a course.

(2) Attendance should be required at all training modules, with successful completion of exercises and a final written or oral examination with at least 50 questions.

(3) A minimum of one-third of the program should be devoted to hands-on exercises.

(4) A curriculum should be established for the 8-hour refresher training required by 29 CFR 1926.65(e)(8), with delivery of such courses directed toward those areas of previous training that need improvement or reemphasis.

(5) A curriculum should be established for the required 8-hour training for supervisors. Demonstrated competency in the skills and knowledge provided in a 40-hour course should be a prerequisite for supervisor training.

2. *Refresher training.*

The 8-hour annual refresher training required in 29 CFR 1926.65(e)(8) should be conducted by qualified training providers. Refresher training should include at a minimum the following topics and procedures:

(a) Review of and retraining on relevant topics covered in the 40-hour program, as appropriate, using reports by the students on their work experiences.

(b) Update on developments with respect to material covered in the 40-hour course.

(c) Review of changes to pertinent provisions of EPA or OSHA standards or laws.

(d) Introduction of additional subject areas as appropriate.

(e) Hands-on review of new or altered PPE or decontamination equipment or procedures. Review of new developments in personal protective equipment.

(f) Review of newly developed air and contaminant monitoring equipment.

3. *On-site training.*

a. The employer should provide employees engaged in hazardous waste site activities with information and training prior to initial assignment into their work area, as follows:

(1) The requirements of the hazard communication program including the location and availability of the written program, required lists of hazardous chemicals, and material safety data sheets.

(2) Activities and locations in their work area where hazardous substance may be present.

(3) Methods and observations that may be used to detect the present or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearances, or other evidence (sight, sound or smell) of hazardous chemicals being released, and applicable alarms from monitoring devices that record chemical releases.

(4) The physical and health hazards of substances known or potentially present in the work area.

(5) The measures employees can take to help protect themselves from work-site hazards, including specific procedures the employer has implemented.

(6) An explanation of the labeling system and material safety data sheets and how employees can obtain and use appropriate hazard information.

(7) The elements of the confined space program including special PPE, permits, monitoring requirements, communication procedures, emergency response, and applicable lock-out procedures.

b. The employer should provide hazardous waste employees information and training and should provide a review and access to the site safety and plan as follows:

(1) Names of personnel and alternate responsible for site safety and health.

(2) Safety and health hazards present on the site.

(3) Selection, use, maintenance, and limitations of personal protective equipment specific to the site.

(4) Work practices by which the employee can minimize risks from hazards.

(5) Safe use of engineering controls and equipment available on site.

(6) Safe decontamination procedures established to minimize employee contact with hazardous substances, including:

(A) Employee decontamination,

(B) Clothing decontamination, and

(C) Equipment decontamination.

(7) Elements of the site emergency response plan, including:

(A) Pre-emergency planning.

(B) Personnel roles and lines of authority and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures not covered by the site safety and health plan.

(H) Emergency medical treatment and first aid.

(I) Emergency equipment and procedures for handling emergency incidents.

c. The employer should provide hazardous waste employees information and training on personal protective equipment used at the site, such as the following:

(1) PPE to be used based upon known or anticipated site hazards.

(2) PPE limitations of materials and construction; limitations during temperature extremes, heat stress, and other appropriate medical considerations; use and limitations of respirator equipment as well as documentation procedures as outlined in 29 CFR 1910.134.

(3) PPE inspection procedures prior to, during, and after use.

(4) PPE donning and doffing procedures.

(5) PPE decontamination and disposal procedures.

(6) PPE maintenance and storage.

(7) Task duration as related to PPE limitations.

d. The employer should instruct the employee about the site medical surveillance program relative to the particular site, including

(1) Specific medical surveillance programs that have been adapted for the site.

(2) Specific signs and symptoms related to exposure to hazardous materials on the site.

(3) The frequency and extent of periodic medical examinations that will be used on the site.

(4) Maintenance and availability of records.

(5) Personnel to be contacted and procedures to be followed when signs and symptoms of exposures are recognized.

e. The employees will review and discuss the site safety plan as part of the training program. The location of the site safety plan and all written programs should be discussed with employees including a discussion of the mechanisms for access, review, and references described.

*B. RCRA Operations Training for Treatment, Storage and Disposal Facilities.*

1. As a minimum, the training course required in 29 CFR 1926.65 (p) should include the following topics:

(a) Review of the applicable paragraphs of 29 CFR 1926.65 and the elements of the employer's occupational safety and health plan.

(b) Review of relevant hazards such as, but not limited to, chemical, biological, and radiological exposures; fire and explosion hazards; thermal extremes; and physical hazards.

(c) General safety hazards including those associated with electrical hazards, powered equipment hazards, lock-out-tag-out procedures, motor vehicle hazards and walking-working surface hazards.

(d) Confined-space hazards and procedures.

(e) Work practices to minimize employee risk from workplace hazards.

(f) Emergency response plan and procedures including first aid meeting the requirements of paragraph (p)(8).

(g) A review of procedures to minimize exposure to hazardous waste and various type of waste streams, including the materials handling program and spill containment program.

(h) A review of hazard communication programs meeting the requirements of 29 CFR 1910.1200.

(i) A review of medical surveillance programs meeting the requirements of 29 CFR 1926.65(p)(3) including the recognition of signs and symptoms of overexposure to hazardous substance including known synergistic interactions.

(j) A review of decontamination programs and procedures meeting the requirements of 29 CFR 1926.65(p)(4).

(k) A review of an employer's requirements to implement a training program and its elements.

(l) A review of the criteria and programs for proper selection and use of personal protective equipment, including respirators.

(m) A review of the applicable appendices to 29 CFR 1926.65.

(n) Principles of toxicology and biological monitoring as they pertain to occupational health.

(o) Rights and responsibilities of employees and employers under applicable OSHA and EPA laws.

(p) Hands-on exercises and demonstrations of competency with equipment to illustrate the basic equipment principles that may be used during the performance of work duties, including the donning and doffing of PPE.

(q) Sources of reference, efficient use of relevant manuals, and knowledge of hazard coding systems to include information contained in hazardous waste manifests.

(r) At least 8 hours of hands-on training.

(s) Training in the job skills required for an employee's job function and responsibility before they are permitted to participate in or supervise field activities.

2. The individual employer should provide hazardous waste employees with information and training prior to an employee's initial assignment into a work area. The training and information should cover the following topics:

(a) The Emergency response plan and procedures including first aid.

(b) A review of the employer's hazardous waste handling procedures including the materials handling program and elements of the spill containment program, location of spill response kits or equipment, and the names of those trained to respond to releases.

(c) The hazardous communication program meeting the requirements of 29 CFR 1910.1200.

(d) A review of the employer's medical surveillance program including the recognition of signs and symptoms of exposure to relevant hazardous substance including known synergistic interactions.

(e) A review of the employer's decontamination program and procedures.

(f) An review of the employer's training program and the parties responsible for that program.

(g) A review of the employer's personal protective equipment program including the proper selection and use of PPE based upon specific site hazards.

(h) All relevant site-specific procedures addressing potential safety and health hazards. This may include, as appropriate, biological and radiological exposures, fire and explosion hazards, thermal hazards, and physical hazards such as electrical hazards, powered equipment hazards, lock-out-tag-out hazards, motor vehicle hazards, and walking-working surface hazards.

(i) Safe use engineering controls and equipment on site.

(j) Names of personnel and alternates responsible for safety and health.

*C. Emergency response training.*

Federal OSHA standards in 29 CFR 1926.65(q) are directed toward private sector emergency responders. Therefore, the guidelines provided in this portion of the appendix are directed toward that employee population. However, they also impact indirectly through State OSHA or USEPA regulations some public sector emergency responders. Therefore, the guidelines provided in this portion of the appendix may be applied to both employee populations.

States with OSHA state plans must cover their employees with regulations at least as effective as the Federal OSHA standards. Public employees in states without approved state OSHA programs covering hazardous waste operations and emergency response are covered by the U.S. EPA under 40 CFR 311, a regulation virtually identical to §1926.65.

Since this is a non-mandatory appendix and therefore not an enforceable standard, OSHA recommends that those employers, employees or volunteers in public sector emergency response organizations outside Federal OSHA jurisdiction consider the following criteria in developing their own training programs. A unified approach to training at the community level between emergency response organizations covered by Federal OSHA and those not covered directly by Federal OSHA can help ensure an effective community response to the release or potential release of hazardous substances in the community.

a. *General considerations.*

Emergency response organizations are required to consider the topics listed in §1926.65(q)(6). Emergency response organizations may use some or all of the following topics to supplement those mandatory topics when developing their response training programs. Many of the topics would require an interaction between the response provider and the individuals responsible for the site where the response would be expected.

(1) Hazard recognition, including:

(A) Nature of hazardous substances present,

(B) Practical applications of hazard recognition, including presentations on biology, chemistry, and physics.

(2) Principles of toxicology, biological monitoring, and risk assessment.

(3) Safe work practices and general site safety.

(4) Engineering controls and hazardous waste operations.

(5) Site safety plans and standard operating procedures.

(6) Decontamination procedures and practices.

(7) Emergency procedures, first aid, and self-rescue.

(8) Safe use of field equipment.

(9) Storage, handling, use and transportation of hazardous substances.

(10) Use, care, and limitations of personal protective equipment.

(11) Safe sampling techniques.

(12) Rights and responsibilities of employees under OSHA and other related laws concerning right-to-know, safety and health, compensations and liability.

(13) Medical monitoring requirements.

(14) Community relations.

b. *Suggested criteria for specific courses.*

(1) *First responder awareness level.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1926.65(q).

(B) Hands-on experience with the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG) and familiarization with OSHA standard 29 CFR 1926.60.

(C) Review of the principles and practices for analyzing an incident to determine both the hazardous substances present and the basic hazard and response information for each hazardous substance present.

(D) Review of procedures for implementing actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including emergency notification procedures and follow-up communications.

(E) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(F) Awareness and knowledge of the competencies for the First Responder at the Awareness Level covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(2) *First responder operations level.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1926.65(q).

(B) Hands-on experience with the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts and other relevant sources of information addressing hazardous substance releases. Familiarization with OSHA standard 29 CFR 1926.60.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles, the types and selection of the appropriate defensive strategy for containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practice of personnel and equipment decontamination.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the First Responder at the Operations Level covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(3) *Hazardous materials technician.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1926.65(q).

(B) Hands-on experience with written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or

manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with 29 CFR 1926.60.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles involved in the release, the appropriate strategy for approaching release sites and containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practices of establishing exposure zones, proper decontamination and medical surveillance stations and procedures.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the Hazardous Materials Technician covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(4) *Hazardous materials specialist.*

(A) Review of and demonstration of competency in performing the applicable skills of 29 CFR 1926.65(q).

(B) Hands-on experience with retrieval and use of written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with 29 CFR 1926.60.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, and the likely behavior of the hazardous substance and its container, vessel, or vehicle.

(D) Review of the principles and practices for identification of the types of hazardous substance transportation containers, vessels and vehicles involved in the release; selecting and using the various types of equipment available for plugging or patching transportation containers, vessels or vehicles; organizing and directing the use of multiple teams of hazardous material technicians and selecting the appropriate strategy for approaching release sites and containing or stopping the release.

(E) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, including knowledge of the available public and private response resources, establishment of an incident command post, direction of hazardous material technician teams, and extended emergency notification procedures and follow-up communications.

(F) Review of the principles and practice for proper selection and use of personal protective equipment.

(G) Review of the principles and practices of establishing exposure zones and proper decontamination, monitoring and medical surveillance stations and procedures.

(H) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(f) Awareness and knowledge of the competencies for the Off-site Specialist Employee covered in the National Fire Protection Association's Standard No. 472, *Professional Competence of Responders to Hazardous Materials Incidents.*

(5) *Incident commander.*

The incident commander is the individual who, at any one time, is responsible for and in control of the response effort. This individual is the person responsible for the direction and coordination of the response effort. An incident commander's position should be occupied by the most senior, appropriately trained individual present at the response site. Yet, as necessary and appropriate by the level of response provided, the position may be occupied by many individuals during a particular response as the need for greater authority, responsibility, or training increases. It is possible for the first responder at the awareness level to assume the duties of incident commander until a more senior and appropriately trained individual arrives at the response site.

Therefore, any emergency responder expected to perform as an incident commander should be trained to fulfill the obligations of the position at the level of response they will be providing including the following:

(A) Ability to analyze a hazardous substance incident to determine the magnitude of the response problem.

(B) Ability to plan and implement an appropriate response plan within the capabilities of available personnel and equipment.

(C) Ability to implement a response to favorably change the outcome of the incident in a manner consistent with the local emergency response plan and the organization's standard operating procedures.

(D) Ability to evaluate the progress of the emergency response to ensure that the response objectives are being met safely, effectively, and efficiently.

(E) Ability to adjust the response plan to the conditions of the response and to notify higher levels of response when required by the changes to the response plan.

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**S. 1458/P.L. 103–298**

General Aviation Revitalization Act of 1994 (Aug. 17, 1994; 108 Stat. 1552; 3 pages)

**S.J. Res. 204/P.L. 103–299**

Recognizing the American Academy in Rome, as American overseas center for independent study and advanced research, on the occasion of the 100th anniversary of its founding. (Aug. 18, 1994; 108 Stat. 1555; 2 pages)

**Last List August 19, 1994**

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| 3 (1993 Compilation and Parts 100 and 101) | (869–022–00002–1) | 33.00 | [1] Jan. 1, 1994 |
| 4 | (869–022–00003–9) | 5.50 | Jan. 1, 1994 |
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| *§§ 1.401–1.440 | (869–022–00088–8) | 30.00 | Apr. 1, 1994 |
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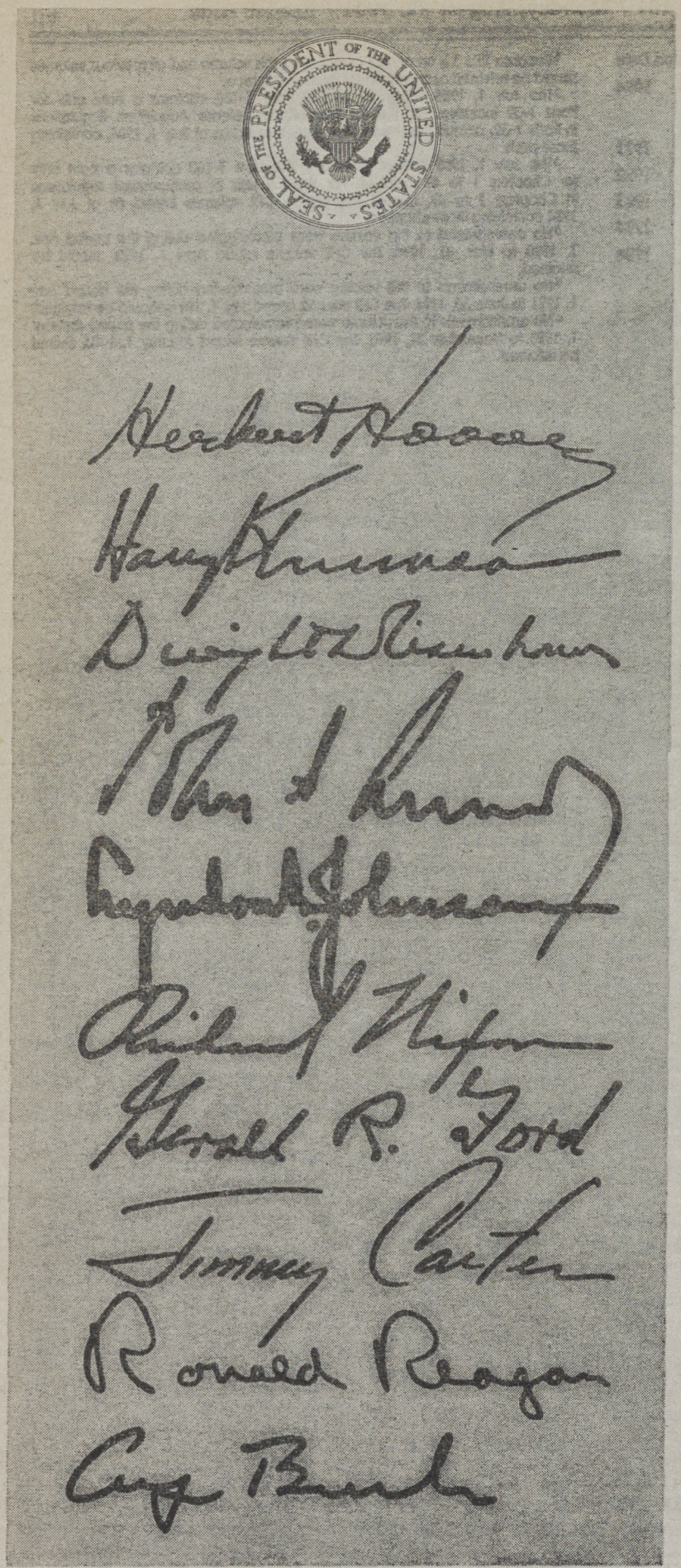
[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

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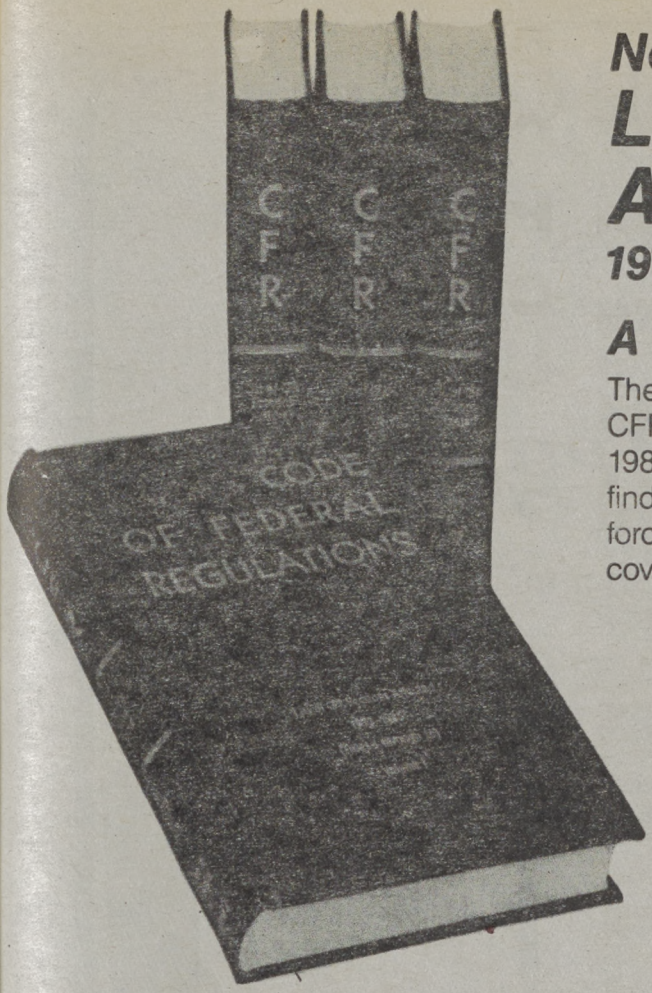
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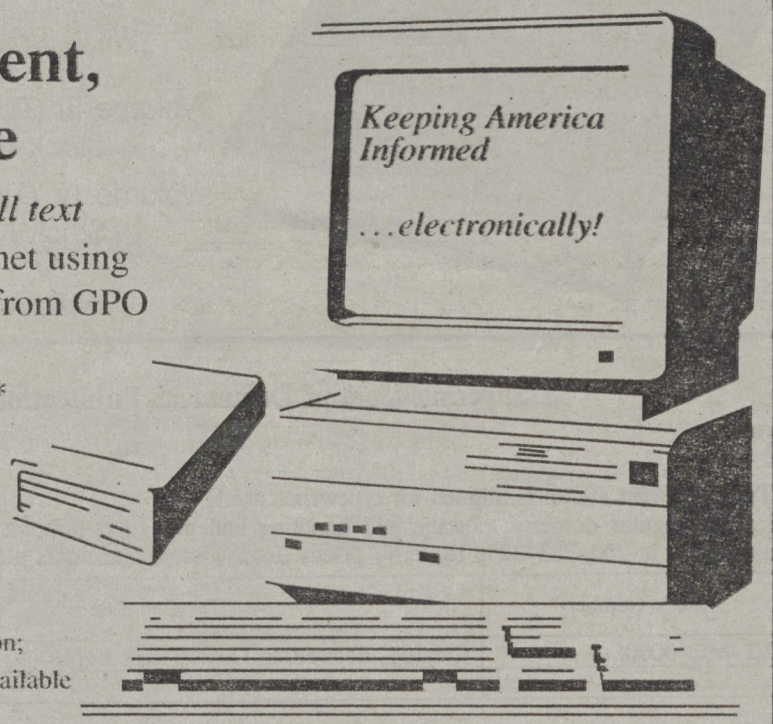
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