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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 362

RIN 3206–AH53

Presidential Management Intern Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to clarify the nomination, selection, and employment procedures of the Presidential Management Intern (PMI) Program. The revised regulations also clarify that PMI's do not serve probation when converted to career or career-conditional appointments.

EFFECTIVE DATES: August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Keeney, 215–597–1920, FAX 215–597–8136.

SUPPLEMENTARY INFORMATION: OPM issued interim regulations with a request for comments on January 22, 1997 (62 FR 3193). Comments were received from one Federal agency. The agency suggested that the reference in § 362.202(a), concerning OPM approval of internship extensions under § 362.202(b), is incorrect. The reference will now read § 362.203(b). In addition, in § 362.202(d) addressing grade and pay, we are inserting the word ''range'' in front of ''consistent'' which was inadvertently omitted.

The agency also suggested that OPM take the lead in providing agencies with individual development plan models, and inform agency components that they are responsible for the 80-hour training requirement and the required one rotational assignment. We did not adopt these suggestions as regulatory additions, but OPM will provide additional guidance to agencies concerning various aspects of the PMI Program on a continuing and regular basis. However, we believe that the agency headquarters office also has a responsibility to remind their components of their responsibilities to PMI's. Ultimately, the headquarters office remains accountable for its components' actions concerning the PMI program.

With these changes, we are adopting the proposed regulations as final.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Parts 315 and 362

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 315 and part 362 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.
Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.
Secs. 315.603 also issued under 5 U.S.C. 8151.
Secs. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.
Secs. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.
Secs. 315.607 also issued under 22 U.S.C. 2506.
Secs. 315.608 also issued under E.O. 12721, CFR, Comp., p. 293.
Secs. 315.610 also issued under 5 U.S.C. 3304(d).
Sesc. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.
Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

2. Section 315.708 is revised to read as follows:

§ 315.708 Conversion based on service as a Presidential Management Intern.

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a Presidential Management Intern who:

(1) Has satisfactorily completed a 2-year Presidential Management Internship, under § 213.3102(ii) of this chapter, at the time of conversion;

(2) Is recommended for conversion within 90 calender days before completion of the Internship; and

(3) Meets the citizenship requirement.

(b) *Tenure on conversion.* (1) Except as provided in paragraph (b)(2) of this section, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he or she has completed the service requirement for career tenure or is excepted from it under § 315.201(c) of this chapter.

(c) *Acquisition of competitive status.* A person converted to career or career-conditional employment under this section does not serve probation and acquires competitive status immediately upon conversion.

3. Part 362 is revised to read as follows:

PART 362—PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Subpart A—Purpose and Definitions

Sec.
362.101 Purpose.
362.102 Definitions.

Subpart B—Program Administration

362.201 Nomination and selection.
362.202 Appointment and extensions.
362.203 Conversion to competitive service.
362.204 Resignation, termination, and reduction in force.
362.205 Movement of interns between Departments or Agencies.
362.206 Career development.

Authority: E.O.12364 of May 24, 1982, 3 CFR, 1982 Comp., p. 185.

Subpart A—Purpose and Definitions

§ 362.101 Purpose.

The Presidential Management Intern (PMI) Program is designed to attract to Federal service outstanding men and women from a wide variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs.

§ 362.102 Definitions.

(a) A *Presidential Management Intern* is appointed in the excepted service under § 213.3102(ii) of this chapter, in an executive agency or department. The individual must have completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic program director, successfully completed an OPM-administered assessment process, and been selected and appointed by an agency for a 2-year Presidential Management Internship.

(b) *A qualifying college or university* is an academic institution formally accredited by an accrediting organization recognized by the Secretary of the U.S. Department of Education (34 CFR part 602).

Subpart B—Program Administration

§ 362.201 Nomination and selection.

(a) *Eligibility.* Individuals eligible to be nominated for the Program are graduate students from a variety of academic disciplines completing or expecting to complete, during the current academic year, an advanced degree from a qualifying college or university. These individuals must demonstrate an exceptional ability, a clear interest in, and a commitment to a career in the analysis and management of public policies and programs.

(b) *Nomination procedure.* (1) The college or university making nominations for the Program shall establish a competitive nomination process to ensure that all eligible students are aware of the PMI Program and how to apply for nomination. The process will also ensure that applicants receive careful and thorough review, and that all receive equal opportunity for nomination.

(2) Students must be nominated by the dean, chairperson, or academic program director.

(3) Students who apply to be nominated must be rated qualified or not qualified for nomination. Nominations are made by school officials through completion of the PMI application form.

(4) Students eligible for veterans' preference who apply for nomination and are found qualified must be nominated. Based on the documentation provided by the student, the college or university must determine preliminary eligibility for veterans' preference. Students eligible for veterans' preference who believe they met the college or university's nomination qualification requirements, but were not nominated, may request a review by the OPM PMI Program office.

(c) *Selection.* Selection of Program finalists will be based on an OPM evaluation of the PMI application and a structured assessment center process. Veterans' preference will be adjudicated by OPM.

§ 362.202 Appointment and extensions.

(a) *Appointing authority.* The appointment authority for Presidential Management Interns is 5 CFR 213.3102(ii). Appointments cannot exceed 2 years unless extended for up to 1 additional year by the agency with the approval of OPM under § 362.203(b).

(b) *Completion of degree requirements.* Agencies must assure that all graduate degree requirements have been met at the time of appointment. Interns may not be appointed prior to the completion of all graduate degree requirements. Exceptions may be made on an individual basis, but in no case will an intern be allowed to remain in the program if all degree requirements are not completed by August 31 of the year in which the intern was selected as a finalist.

(c) *Time period.* Agencies may appoint individuals with formal notification of their selection as PMI finalists no later than December 31 of the year in which they were selected as finalists. Exceptions may be granted on a case-by-case basis upon request of the agency to the OPM PMI Program office no later than December 15 of the year in which the interns were finalists.

(d) *Grade and pay.* Initial appointments must be made at the grade 9, step 1 level of the General Schedule. If an intern has had prior higher level Federal Government service, the individual may be placed at a higher step within the GS–9 rate range consistent with the maximum payable rate rules under 5 CFR 531.203(c). Promotion to the GS–11 level may occur after satisfactory completion of 1 year of continuous service. Under 5 CFR 213.3102(ii), intern positions are authorized only at the GS–9 and GS–11 levels. Therefore, the agency has the option of promoting an intern to the GS–12 level on or after the date of conversion to the competitive service.

(e) *Citizenship.* Interns do not need to be United States citizens during their internship. However, if a noncitizen intern is hired, the agency must make sure that:

(1) The intern is lawfully admitted to the United States as a permanent resident or otherwise is authorized to be employed by the U.S. Immigration and Naturalization Service;

(2) The agency is authorized to pay the noncitizen under the annual appropriations act ban or any agency-specific enabling appropriation statute; and

(3) The intern acquires United States citizenship prior to conversion under 5 CFR 315.708.

(f) *Extensions.* Agencies must request, in writing, OPM approval to extend an internship for up to 1 additional year beyond the authorized 2 years in order to provide the intern with additional training and developmental activities. The request should be submitted no later than 60 days prior to the end of the initial 2-year period.

§ 362.203 Conversion to competitive service.

(a) In accordance with 5 CFR 315.708, employees who are United States citizens and have successfully completed Presidential Management Internships may be converted noncompetitively to career or career-conditional appointments in positions for which they are qualified.

(b) Conversions will be effective on the date the 2-year service requirement is met, unless the internship is extended by the agency, with approval of OPM, for up to one additional year.

(c) Agencies must inform the OPM PMI Program office when an individual will not be converted.

§ 362.204 Resignation, termination, and reduction in force.

(a) *Resignation.* An employee who resigns during the internship does not have reinstatement eligibility for competitive service positions and cannot be re-interned to the PMI Program.

(b) *Termination.* The appointment of a Presidential Management Intern expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with 5 CFR 315.708, or extend the internship in accordance with § 362.202(b). If neither action is taken, the PMI appointment terminates.

(c) *Reduction in force.* Presidential Management Interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter.

§ 362.205 Movement of interns between Departments or Agencies.

To move from one agency to another during the internship, the intern must separate from the current agency and be reappointed under PMI appointment by the new employing agency without a break in service. The intern does not begin a new 2-year internship period; the time previously served under the PMI Program counts toward the completion of the 2-year period. The

new employing agency must notify the OPM PMI Program office of the action.

§ 362.206 Career development.

(a) *OPM responsibilities.* OPM will:

(1) Provide orientation and graduation programs for each intern class; and

(2) Serve as a clearinghouse of available training opportunities.

(b) *Agency responsibilities.* Each agency will:

(1) Work with the intern to develop a written outline of core competencies and technical skills (called an individual development plan) the intern must gain before conversion to a target position;

(2) Provide at least 80 hours of formal training a year, including training in core competencies targeted to a functional area into which the intern will most likely be converted; and

(3) Provide at least one rotational assignment to another functional area, made at the discretion of the agency.

[FR Doc. 97–21981 Filed 8–19–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–085–1]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to remove the regulated portion of Los Angeles County, CA, from the list of areas regulated because of the Mexican fruit fly, and to remove California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California and that restrictions on the interstate movement of regulated articles from California are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: Interim rule effective August 15, 1997. Consideration will be given only to comments received on or before October 20, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–085–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–085–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in § 301.64(a), and regulated areas are listed in § 301.64–3(c).

In an interim rule effective January 22, 1996, and published in the **Federal Register** on January 26, 1996 (61 FR 2391–2393, Docket No. 95–089–1), we quarantined the State of California and designated a portion of Los Angeles County as a regulated area because that area had been found to be infested with the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from Los Angeles County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on February 24, 1997.

Since then no evidence of Mexican fruit fly infestations has been found in this area, and we have determined that the Mexican fruit fly no longer exists in Los Angeles County. Therefore, we are removing this area from the list of areas in § 301.64–3(c) regulated because of the Mexican fruit fly. As a result of this action there is no longer an area in California regulated because of the Mexican fruit fly. Because we have determined that the Mexican fruit fly no longer exists in California, we are removing California from the list in § 301.64(a) of States quarantined because of the Mexican fruit fly.

Immediate Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule removes restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within this regulated area, there are 833 small entities that may be affected by this rule. These include 486 fruit sellers, 259 distributors, 47 nurseries, 30 swap meets, 4 food banks, 4 growers, 2 community gardens, and 1 food processor. These 830 entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

These small entities sell regulated articles primarily for local intrastate, not

interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a) is amended by removing the phrase ''the States of California and Texas'' and by adding the phrase ''the State of Texas'' in its place.

§ 301.64–3 [Amended]

3. In § 301.64–3, paragraph (c) is amended by removing the entry for ''California'' and the description of the regulated area for Los Angeles County, CA.

Done in Washington, DC, this 15th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–22014 Filed 8–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV97–927–1 IFR]

Winter Pears Grown in Oregon, Washington, and California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the assessment rate established for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of winter pears grown in Oregon, Washington, and California. Authorization to assess winter pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period for this marketing order covers the period July 1 through May 31. The assessment rate will continue until amended, suspended, or terminated.

DATES: Effective on August 21, 1997. Comments received by September 19, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: *Teresa L. Hutchinson*, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440 or *George J. Kelhart*, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Telephone:* (202) 690–3919, *Fax:* (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting *Jay Guerber*, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Telephone:* (202) 720–2491, *Fax:* (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable winter pears beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

This rule increases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.405 to $0.44 per standard box.

The winter pear marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of winter pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 30, 1997, and unanimously recommended 1997–98 expenditures of $8,066,790 and an assessment rate of $0.44 per standard box of winter pears. In comparison, last year's budgeted expenditures were $5,502,979. The assessment rate of $0.44 is $0.035 more than the rate currently in effect. The Committee recommended an increased assessment rate, because the current rate would not generate enough income to adequately administer the program.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Major expenses recommended by the Committee for the 1997–98 fiscal period include $7,010,550 for paid advertising, $346,200 for improvement of winter pears (production research), $161,549 for salaries, and $75,000 for industry development. Budgeted expenses for these items in 1996–97 were $4,674,675, $249,316, $154,387, and $75,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears. Winter pear shipments for the year are estimated at 17,310,000 standard boxes, and the $0.44 per standard box assessment rate should provide $7,616,400 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 1,800 producers of winter pears in the production area and approximately 90 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of winter pear producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $8,066,790 and an assessment rate of $0.44 per standard box of winter pears. The assessment rate of $0.44 is $0.035 more than the rate currently in effect. The Committee recommended an increased assessment rate, because the current rate would not generate enough income to adequately administer the program. That is, enough income would not be generated to cover its increased expenses, and maintain an adequate operating reserve.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Major expenses recommended by the Committee for the 1997–98 fiscal period include $7,010,550 for paid advertising, $346,200 for improvement of winter pears (production research), $161,549 for salaries, and $75,000 for industry development. Budgeted expenses for these items in 1996–97 were $4,674,675, $249,316, $154,387, and $75,000, respectively. The increase in paid advertising is needed to help the industry market this season's crop, which is significantly larger than last year's crop. A lower level of funding for paid advertising was ruled out by the Committee because it felt that a more aggressive advertising program was needed this season to market the large crop. The increased level for production research provides funds for current and anticipated research in 1997–98.

The Committee discussed the alternative of not increasing the assessment rate. However, it decided against this course of action because continuation of the current rate would not provide enough income to meet its 1997–98 budgeted expenses, and maintain an adequate operating reserve.

Winter pear shipments for the year are estimated at 17,310,000 standard boxes, which should provide $7,616,400 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $4.82 and $11.81 per standard box of winter pears. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 0.04 and 0.09 percent.

This action will increase the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1997–98 fiscal period began on July 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable winter pears handled during such fiscal period; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 927.236 [Amended]

2. Section 927.236 is amended by removing the words ''July 1, 1996,'' and adding in their place the words ''July 1, 1997,'' and by removing ''$0.405'' and adding in its place ''$0.44.''

Dated: August 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–22013 Filed 8–19–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–124–AD; Amendment 39–10104; AD 97–17–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 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 Boeing Model 777–200 series airplanes. This action requires repetitive torquing of the bushing retainer nuts of the pivot pins in the horizontal stabilizer hinge assembly to tighten loose nuts to the new torque value; and repetitive visual inspections, if necessary, to detect bushing migration or damage to adjacent structures, and repair of any damage. This proposal also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by a report of a loose bushing retainer nut, which may be attributed to low nut torque. The actions specified in this AD are intended to detect and correct loose bushing retainer nuts of the pivot pins in the horizontal stabilizer hinge assembly, which could result in bushing migration and consequent damage to the adjacent structure, and reduced controllability of the airplane.

DATES: Effective September 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 1997.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the 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: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Boeing recently notified the FAA that an unsafe condition may exist on certain Boeing Model 777–200 series airplanes. Investigation revealed that a loose bushing retainer nut of the pivot pin in the horizontal stabilizer hinge assembly was found on a Boeing Model 777–200 flight test airplane that had accumulated approximately 2,000 total flight cycles. The cause of the loose bushing retainer nut may be attributed to low nut torque. A loose bushing retainer nut of the pivot pin in the horizontal stabilizer hinge assembly, if not corrected, could result in bushing migration and consequent damage to the adjacent structure, and reduced controllability of the airplane.

Explanation of Relevant Service Information

Boeing has issued Service Bulletin 777–53–0006, dated May 8, 1997, which describes procedures for repetitive inspections of the bushing retainer nuts of the pivot pins in the horizontal stabilizer hinge assembly to detect and correct loose bushing retainer nuts, migration of the bushings, or damage to adjacent structures. This service bulletin also describes optional procedures for tightening the bushing retainer nuts to a torque level of 1,000 to 1,500 in-lbs. In addition, this service bulletin describes procedures for tightening the bushing retainer nuts and installing anti-rotation brackets to prevent the nuts from rotating, which would eliminate the need for repetitive inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777–200 series airplanes of the same type design, this AD is being issued to detect and correct loose bushing retainer nuts of the pivot pins in the horizontal stabilizer hinge assembly, which could result in bushing migration and consequent damage to the adjacent structure, and reduced controllability of the airplane. This action requires repetitive torquing of the bushing retainer nuts of the pivot pins in the horizontal stabilizer hinge assembly to tighten loose nuts to the new torque value of 1,000 to 1,500 in-lbs; and repetitive visual inspections, if necessary, to detect bushing migration or damage to adjacent structures. This proposal also provides for an optional action of installing brackets to prevent rotation of the bushing retainer nuts, which would constitute termination for the repetitive inspections. These actions are required to be accomplished in accordance with the service bulletin described previously.

Differences Between the AD and the Relevant Service Information

Operators should note that, although Boeing Service Bulletin 777–53–0006 provides procedures to eliminate the need for repetitive inspections after accomplishment of a third inspection (2,150 flight cycles), this AD requires repetitive inspections at intervals not to exceed 1,000 flight cycles, until accomplishment of the terminating action. In developing an appropriate compliance time for this AD, the FAA has determined that the repetitive inspections should not be extended to a third inspection (2,150 flight cycles) and that, in order to provide an acceptable level of safety, repetitive intervals should not exceed 1,000 flight cycles.

Operators should also note that, although the service bulletin specifies that the manufacturer must be contacted for instructions in the repair of damage, this AD requires the repair to be accomplished in accordance with a method approved by the FAA.

Interim Action

The FAA is considering further rulemaking to supersede this AD to require installing anti-rotation brackets to prevent the nuts from rotating. However, the planned compliance time for accomplishment of this action is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

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 97–NM–124–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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. 106(g), 40113, 44701.

§39.13 [Amended]

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

97–17–02 Boeing: Amendment 39–10104. Docket 97–NM–124–AD.

Applicability: Model 777–200 series airplanes, line numbers 3, 5, 7 through 9 inclusive, 11 through 13 inclusive, 15 through 17 inclusive, and 19 through 22 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct loose bushing retainer nuts of the pivot pins in the horizontal stabilizer hinge assembly, which could result in bushing migration and consequent damage to the adjacent structure, and reduced controllability of the airplane, accomplish the following:

(a) Within 150 flight cycles after the effective date of this AD, torque the bushing retainer nuts to the new torque value of 1,000 to 1,500 in-lbs, in accordance with Figure 2 of the Boeing Service Bulletin 777–53–0006, dated May 8, 1997. Repeat the torquing thereafter at intervals not to exceed 1,000 flight cycles.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

(b) If any bushing retainer nut is loose and is not correctly attached to the bushing, prior to further flight, perform a visual inspection to determine whether bushing migration has occurred, in accordance with Figure 2 of the Boeing Service Bulletin 777–53–0006, dated May 8, 1997.

(1) If bushing migration has not occurred, prior to further flight, tighten the bushing retainer nuts in accordance with Figure 2 of the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,000 flight cycles.

(2) If bushing migration has occurred, prior to further flight, inspect/replace the bushing and other affected components and repair any damage, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Accomplishment of installing an anti-rotation bracket in accordance with Figure 3 of Boeing Service Bulletin 777–53–0006, dated May 8, 1997, constitutes terminating action for the repetitive inspection requirements of this AD.

(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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(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) Certain actions shall be done in accordance with Boeing Service Bulletin 777–53–0006, dated May 8, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 4, 1997.

Issued in Renton, Washington, on August 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–21773 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–167–AD; Amendment 39–10099; AD 97–16–07]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires replacement of the existing fire, tailpipe, and bleed-air overheat detector control units with new, improved units. This amendment is prompted by reports indicating that false engine and auxiliary power unit (APU) fire warnings were issued from the fire detector control units due to moisture or induced voltages of the detector control unit. The actions specified by this AD are intended to prevent such false fire warnings, which could result in unnecessary diversion of the airplane, and resultant increased risks to the airplane, passengers, and crew, and the potential for an overweight landing.

DATES: Effective September 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1721; fax (425) 227–1149.

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 Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on May 1, 1997 (62 FR 23695). That action proposed to require replacement of the existing fire, tailpipe, and bleed leak detector control units with new, improved units.

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.

Revised Service Bulletin Citation

The final rule has been revised to clarify that Saab Service Bulletin 2000–26–002, which was cited in the proposal as the appropriate source of service information, includes Attachments 1 and 2. These attachments specify procedures from the Aircraft Maintenance Manual for removal and installation of the bleed-air overheat detection system control unit.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the

adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 2 Saab Model SAAB 2000 series 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 $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $360, or $180 per airplane.

The 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.

Regulatory Impact

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. 106(g), 40113, 44701.

§39.13 [Amended]

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

97–16–07 Saab Aircraft AB: Amendment 39–10099. Docket 96–NM–167–AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers 005 through 029 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false fire warning inputs of the engines and auxiliary power unit (APU), which could result in unnecessary diversion of the airplane, resultant increased risks to the airplane, passengers, and crew, and the potential for an overweight landing; ccomplish the following:

(a) Within 4 months after the effective date of this AD, replace the existing fire (engine/APU), tailpipe, and bleed-air overheat detector control units with new, improved control units, in accordance with Saab Service Bulletin 2000–26–002, dated May 9, 1995, including Attachments 1 and 2.

(b) As of the effective date of this AD, no person shall install a fire, tailpipe, or bleed-air detector control unit having part number 25000020–21, 25000021–31, or 25000020–11 on any airplane.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with 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.

(e) The replacement shall be done in accordance with Saab Service Bulletin 2000–26–002, dated May 9, 1995, including Attachments 1 and 2, which includes the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–6	Original	May 9, 1995.
	Attachment 1	
1–3	Original	Not Dated.
	Attachment 2	
1–3	Original	Not Dated.

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 SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 24, 1997.

Issued in Renton, Washington, on July 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–21791 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–27–AD; Amendment 39–10108; AD 97–17–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214ST helicopters, that requires replacement of each emergency float inflation solenoid valve (valve). This amendment is prompted by two inadvertent inflations of emergency float systems that resulted from self-

activations of the valves. The actions specified by this AD are intended to prevent self-activation of the valves, and subsequent inadvertent inflation of the emergency float system, which could lead to loss of control of the helicopter.

EFFECTIVE DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5157; fax (817) 222–5960.

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 Model 214ST helicopters, equipped with an emergency float kit, part number (P/N) 214–706–120, containing valves, P/N 214–073–929–103 or –105, in solenoid valve assemblies (valve assemblies), P/N 214–073–940–101 or –103, was published in the **Federal Register** on November 20, 1996 (61 FR 59033). That action proposed to require replacement of all existing valves, P/N 214–073–929–103 and –105, in valve assemblies, P/N 214–073–940–101 and –103.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on 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 9 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,100 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,980.

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, 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 97–17–06 Bell Helicopter Textron, Inc.: Amendment 39–10108. Docket No. 96–SW–27–AD.

Applicability: Model 214ST helicopters, equipped with an emergency float kit, part number (P/N) 214–706–120, containing emergency float inflation solenoid valves, P/N 214–073–929–103 or –105, in solenoid valve assemblies, P/N 214–073–940–101 or –103, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent self-activation of the valves, and subsequent inadvertent inflation of the emergency float system, which could lead to loss of control of the helicopter, accomplish the following:

(a) At the next scheduled ''B'' (250 hour) inspection, or 180-day float inspection, or 3-year float system operational inspection, whichever occurs first, remove solenoid valves, P/N 214–073–929–103 or –105, from solenoid valve assemblies, P/N 214–073–940–101 or –103, and replace with solenoid valves, P/N 214–073–929–107.

Note 2: Solenoid valve assemblies, P/N 214–073–940, consist of a valve, P/N 214–073–929 and a decal, P/N 31–023–8B. Solenoid valve assembly, P/N 214–073–940–105, contains solenoid valve, P/N 214–073–929–107.

(b) Installation of solenoid valves, P/N 214–073–929–107, or solenoid valve assemblies, P/N 214–073–940–105, constitutes terminating action for the requirements of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

(d) 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 helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on September 24, 1997.

Issued in Fort Worth, Texas, on August 13, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–22044 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–53–AD; Amendment 39–10110; AD 96–23–07 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain McDonnell

Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires visual/dye penetrant and ultrasonic inspections to detect cracks in the vertical leg of the rear spar lower cap of the wings, and various follow-on actions. This amendment is prompted by the necessity to provide the current address of the FAA office that receives the results of reporting requirements of this AD. The actions specified in this AD are intended to prevent fatigue cracking in the vertical leg of the rear spar lower cap of the wing, which, if not detected and corrected in a timely manner, could result in loss of the spar cap, and consequent damage to the spar cap web and adjacent wing skin structure; this condition could lead to reduced structural integrity of the wing.

DATES: Effective September 4, 1997.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of December 19, 1996, (61 58323, November 14, 1996).

Comments for inclusion in the Rules Docket must be received on or before October 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–53-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnel Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On November 5, 1996, the FAA issued AD 96–23–07, amendment 39–9812 (61 FR 58323, dated November 14, 1996), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require visual/dye penetrant and ultrasonic inspections to detect cracks in the vertical leg of the rear spar lower cap of the wings, and various follow-on actions. That action was prompted by reports indicating that, due to improper torque tightening of the attach studs of the flap hinge fitting, fatigue cracks were found in the vertical leg of the rear spar lower cap of the wing. The actions required by that AD are intended to prevent such fatigue cracking, which, if not detected and corrected in a timely manner, could result in loss of the spar cap, and consequent damage to the spar cap web and adjacent wing skin structure; this condition could lead to reduced structural integrity of the wing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA notes that the FAA office (referenced as the address to provide certain results of reporting requirements) has a new address, new phone number, and a new facsimile number. The FAA has determined that the new address is pertinent information necessary to readily permit compliance with the reporting requirements of this AD. Therefore, the FAA has revised the final rule to reflect the current address of the appropriate FAA office. In all other respects, this AD remains unchanged.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 96–23–07 to specify the current address of the referenced FAA office to assist operators in readily meeting the reporting requirements of this AD.

Determination of Rule's Effective Date

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 96–NM–53–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9812 (61 FR 58323, dated November 14, 1996), and by adding a new airworthiness directive (AD), amendment 39–10110, to read as follows:

96–23–07 R1 McDonnell Douglas: Amendment 39–10110. Docket 96-NM–53-AD. Revises AD 96–23–07, Amendment 39–9812.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the vertical leg of the rear spar lower cap of the wing, which could lead to reduced structural integrity of the wing, accomplish the following:

Note 2: Actions specified in this AD that have been performed prior to the effective date in accordance with McDonnell Douglas MD–80 Service Bulletin 57–184, dated March 16, 1989, are considered acceptable for compliance with the applicable requirement of this AD.

(a) *Visual/Dye Penetrant Inspection and Ultrasonic Inspection.* Perform visual/dye penetrant and ultrasonic inspections to detect cracks in the vertical leg of the rear spar lower cap of the wings below and in the adjacent area of the two lower attaching stud holes for the inboard hinge fitting of the outboard flap at station Xrs=164.000, in accordance with McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For airplanes that have accumulated less than 8,000 total landings as of December 19, 1996, (the effective date of AD 96–23–01): Perform the inspection prior to the accumulation of 10,000 landings or within 3,000 landings after December 19, 1996, whichever occurs later.

(2) For airplanes that have accumulated 8,000 or more total landings but less than 10,000 total landings as of December 19, 1996: Perform the inspection within 3,000 landings after December 19, 1996.

(3) For airplanes that have accumulated 10,000 or more total landings but less than 15,000 total landings as of December 19, 1996: Perform the inspection within 2,400 landings after December 19, 1996.

(4) For airplanes that have accumulated 15,000 or more total landings as of December 19, 1996: Perform the inspection within 1,800 landings after December 19, 1996.

(b) *Condition 1 (No Cracks).* If no crack is detected during any inspection required by paragraph (a) of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994.

(1) *Condition 1, Option 1 (Terminating Action).* Prior to further flight, tighten the four mounting studs of the flap hinge fitting in the rear spar caps (2 studs in the upper cap and 2 studs in the lower cap) to the applicable torque value, in accordance with the service bulletin. Accomplishment of this tightening of the mounting studs of the flap hinge fitting constitutes terminating action for the repetitive inspection requirements of paragraph (b)(2) of this AD.

(2) *Condition 1, Option 2 (Repetitive Inspection).* Repeat the visual/dye penetrant and ultrasonic inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 landings until paragraph (b)(1) of this AD is accomplished.

(c) *Condition 2 (Cracks).* If any crack is detected during any inspection required by paragraph (a) or (b)(2) of this AD, prior to further flight, perform a high frequency eddy current inspection to confirm the existence of cracking, in accordance with McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994. After this inspection, accomplish the requirements of either paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable.

(1) *No Cracking Confirmed.* If no cracking is confirmed, accomplish the requirements of either paragraph (b)(1) [''Condition 1, Option 1 (Terminating Action)''] or (b)(2) [''Condition 1, Option 2 (Repetitive Inspection)''] of this AD.

(2) *Condition 2, Option 1 (Permanent Repair).* If any cracking is confirmed, prior to further flight, replace the entire spar cap or accomplish the permanent splice repair of the spar cap, and tighten the four mounting studs of the flap hinge fitting in the rear spar caps (2 studs in the upper cap and 2 studs in the lower cap) to the applicable torque value, in accordance with the service bulletin. Accomplishment of this tightening of the mounting studs constitutes terminating action for the repetitive inspection requirements of paragraph (c)(3) of this AD.

(3) *Condition 2, Option 2 (Temporary Repair).* If cracking is confirmed and it does not extend beyond the location limits and does not exceed the maximum permissible crack length of 2 inches, prior to further flight, accomplish the temporary repair modification of the spar cap in accordance with the service bulletin. Thereafter, repeat the eddy current inspection at intervals not to exceed 3,000 landings until paragraph (c)(2) of this AD is accomplished.

(i) If any crack progression is found during any repetitive eddy current inspection following accomplishment of the temporary repair, prior to further flight, contact the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, telephone (562) 627–5237, fax (562) 627–5210, to establish the appropriate repair or replacement interval.

Note 3: Operators should note that, unlike the recommended compliance time of ''within 3,000 landings after discovery of cracking,'' which is specified in the service bulletin as the time for accomplishing the permanent splice repair or replacement of the spar cap, this AD requires that operators contact the FAA prior to further flight. The FAA finds that the repair/replacement interval should be established based on the crack progression. Where there are differences between the AD and the service bulletin in this regard, the AD prevails.

(ii) If any new crack is found during any repetitive eddy current inspection following accomplishment of the temporary repair, prior to further flight, accomplish the permanent repair in accordance with the service bulletin.

(d) *Reporting Requirement.* Within 10 days after accomplishing the initial visual/dye penetrant and ultrasonic inspections required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) 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 ACO. 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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 airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 57–184, Revision 1, dated December 22, 1994. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of December 19, 1996 (61 FR 58323, November 14, 1996). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 4, 1997.

Issued in Renton, Washington, on August 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–22042 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 97–72]

RIN 1515–AB82

Country of Origin Marking

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to ease the requirement that whenever words appear on imported articles indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity and in comparable size lettering to those words preceded by the words ''Made in,'' ''Product of,'' or other words of similar meaning. Customs believes that, consistent with the statutory requirements of 19 U.S.C. 1304, the country of origin marking only needs to satisfy these requirements if the name of the other geographic location may mislead or deceive the ultimate purchaser as to the actual country of origin.

EFFECTIVE DATE: September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings, 202–482–6980.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods are a product. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions to 19 U.S.C. 1304.

Section 134.46, Customs Regulations (19 CFR 134.46) provides that in any case in which the words ''United States'' or ''American,'' the letters ''U.S.A.,'' any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by ''Made in,'' ''Product of,'' or other words of similar meaning.

Section 134.46 was promulgated pursuant to the statutory authority of 19 U.S.C. 1304(a)(2), which provides that the Secretary of the Treasury may by regulations require the addition of any words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser.

A strict application of § 134.46 would require that in any case in which a non-origin locality reference appears on an imported article or its container, the actual country of origin of the article must appear in close proximity and in comparable size lettering to the locality reference preceded by the words ''Made in,'' ''Product of,'' or other words of similar meaning.

Because Customs believes that the strict requirements of § 134.46 are not always necessary to ''prevent deception or mistake as to the origin of the article'' in accordance with 19 U.S.C. 1304, Customs proposed to modify § 134.46 in a Notice of Proposed Rulemaking published in the **Federal Register** (60 FR 57559) on November 16, 1995.

In that document, Customs also proposed to remove § 134.36(b), which provides that an exception from marking shall not apply to any article or retail container bearing any words, letters, names or symbols described in § 134.46 or § 134.47 which imply that an article was made or produced in a country other than the actual country of origin. Since the special marking requirements of § 134.46, as proposed to be amended, would be triggered only when the the marking appearing on an imported article or its container is capable of misleading or deceiving an ultimate purchaser as to the actual country of origin of the article, § 134.36(b), which serves the same purpose, would be redundant and no longer needed.

The proposal to modify § 134.46 reflected Customs practice in applying the regulation. Customs has applied a less stringent standard in determining whether the country of origin marking appearing on an imported article or its container is acceptable. That is, Customs takes into account the question of whether the presence of words or symbols on an imported article or its container can mislead or deceive the ultimate purchaser as to the actual country of origin of the article. Consequently, if a non-origin locality reference appears on an imported article or its container, Customs applies the special marking requirements of § 134.46 only if it finds that the reference may mislead or deceive the ultimate purchaser as to the actual country of origin of the imported article. If Customs concludes that the non-origin locality reference would not mislead or deceive an ultimate purchaser as to the actual country of origin of the imported article, Customs' policy is that the special marking requirements of § 134.46 are not triggered, and the origin marking only needs to satisfy the general requirements of permanency, legibility and conspicuousness under 19 U.S.C. 1304 and 19 CFR part 134. This less stringent application is evidenced in

numerous Customs headquarters ruling letters.

Analysis of Comments

A total of 17 entities responded to the proposal. Fourteen respondents supported the proposal, although some suggested certain changes. Three commenters opposed the amendment.

Comments Supporting Customs Proposal

Comments: One commenter stated that the proposed amendment to § 134.46 would provide additional flexibility in accommodating the country of origin marking on the labels of its food products, many of which have very limited surface areas available for labelling because of their size (*e.g.*, small bags of candy, snacks, candy bars, gum).

Two commenters stated that references to places other than the country of origin are not necessarily misleading. The context must be considered. These two commenters believe that the proposed amendment would bring the country of origin marking regulations into closer conformity with the purpose and congressional intent of section 1304 and would serve the goal of informed compliance by bringing the country of origin marking regulations into closer conformity with positions taken in certain Customs rulings.

Two other commenters stated that if the proposed amendment is adopted, all rulings which require proximity even when there is no realistic possibility of confusion should be revoked. They specifically mentioned T. D. 86–129 of June 26, 1996, which currently requires that the country of origin statement on footwear and its packaging must appear in close proximity to any non-origin reference, even in circumstances where the non-origin reference would not be misleading or deceptive to the consumer. These commenters asked why shoe boxes, for example, should be held to a higher standard of compliance than other products, such as wearing apparel, where a design/decoration exception can be used for not applying the stricter marking requirements of § 134.46.

Another respondent believes that the proposal will enhance harmonization between the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms (ATF) regarding country of origin labelling requirements of imported foreign origin alcoholic beverages. ATF labelling specialists are aware of the general Customs requirement that country of origin markings should be located on all labels of imported foreign alcoholic beverages and that these markings should meet the general requirements of permanency, legibility and conspicuousness. However, ATF labelling specialists are not usually aware of the specifics of Customs regulations or Customs rulings which interpret Customs regulations. Therefore, ATF labelling specialists may approve a label for ATF purposes which is not in strict accordance with Customs requirements.

Finally, one commenter noted its belief that the Customs proposal is consistent with the World Trade Organization Rules, Article 4.5.1. of the Codex Standard for the labelling of prepackaged foods (Codes STAN 1–1985, Rev. 1–1995). This rule provides that the ''country of origin shall be declared if its omission would mislead or deceive the consumer''. According to the Codex standard, it is not required that the country of origin be marked in close proximity to the words indicating a geographic non-origin location.

Response: Customs agrees with the above comments. Any recipient of a prior ruling which may be inconsistent with this final rule should request reconsideration of such ruling in the context of the amended § 134.46.

Comments Supporting Customs Proposal With Suggested Changes

Comment: One commenter supports Customs proposal but suggests that § 134.46 be amended to read that a country of origin mark must appear in close proximity to a non-origin geographical reference only if the reference ''will mislead or deceive the ultimate purchaser''. This commenter states that the words ''may mislead or deceive'' used in the proposed regulation will lead to subjective and differing interpretations. He suggests that one way of remedying this problem is to permit an importer to submit statistically significant studies concerning consumer perception of a particular non-origin geographical reference in order to demonstrate that the reference does not mislead or deceive the average consumer.

Another respondent supporting the proposal suggests that the word ''may'' be replaced by ''is likely to'' in the final rule if adopted. This will insure that the § 134.46 stricter marking requirements will be imposed not when there is a mere possibility, but rather a likelihood, of misleading or deceiving the ultimate purchaser.

Response: Customs does not agree that the word ''may'' as proposed in the amendment to § 134.46 should be changed to ''will'' or ''is likely to.'' Customs believes that the ultimate purchaser is provided with the greatest assurance and protection against being misled or deceived by non-origin marks by granting Customs the discretion to decide on a case-by-case basis whether a mark ''may mislead or deceive an ultimate purchaser as to the actual country of origin.'' As a result, Customs is able to be more flexible in deciding not to apply the stricter marking requirements of § 134.46 in every instance where a mark has a non-origin type reference. The word ''will'' or the phrase ''is likely to'' could inhibit accomplishment of these goals. Therefore, Customs does not believe that a change in the wording of the proposed amendment is necessary.

Comment: One commenter supports Customs proposal, but suggests that if Customs adopts the proposal, it should also provide an exception for manhole covers, rings, frames and assemblies thereof covered by 19 U.S.C. 1304(e). This commenter believes that in the absence of such an exclusion from the scope of this regulation, it possibly could be interpreted as ignoring the statutory requirements of section 1304(e).

Response: Section 1304(e) of title 19 United States Code provides that:

> No exception may be made under subsection (a)(3) of this section with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally permanent method of marking.

Since the special country of origin marking requirements for these articles in 19 U.S.C. 1304(e) are statutory, rather than regulatory as the requirements of § 134.46 are, the proposed change, if adopted, would have no effect on these statutory requirements. The amendment of § 134.46 will not implement any of the marking exceptions under 19 U.S.C. 1304(a)(3), and therefore will have no impact upon the general marking requirements of § 1304(e). If the proposed amendment to § 134.46 is adopted, these articles still must satisfy the statutory marking requirements of § 1304(e), regardless of § 134.46 marking. Therefore, Customs does not agree with the suggestion.

Comment: One commenter supports Customs proposal but also encourages Customs to extend this initiative to situations arising under § 134.47 (displaying the name of a place other than the true country of origin as part of a trademark, trade name or souvenir). The commenter states that Customs practice in considering whether to apply § 134.47 also involves an analysis of

potential consumer confusion arising from the use of a trademark displaying the name of a place other than the country of origin. Thus the proposed amendment would seem logically applicable to § 134.47. Furthermore, since Customs in its Notice views § 134.36(b) as aimed essentially at combating confusing, misleading, or deceptive marking, and as section 134.36(b) in turn identifies as equally confusing, misleading or deceptive those types of markings defined both by §§ 134.46 and 134.47, it would seem that § 134.47 is as good a candidate for the proposed amendment as is § 134.46. Both are equally aimed at avoiding confusion to the ultimate purchaser.

Response: Customs agrees with the commenter that Customs proposal of applying the stricter marking requirements of § 134.46 only if the non-origin reference ''may mislead or deceive the ultimate purchaser as to the actual country or origin'' should be applied to trademarks, trade names or souvenir markings which depict non-origin references. However, Customs does not agree that this change can be made under the existing proposal, but that a new proposal is required. Therefore, Customs will issue a new notice of proposed rulemaking proposing to either amend § 134.47 consistent with the determination in this document or to remove § 134.47 since § 134.46, as amended, will effectively apply to any non-origin type reference, including those which are part of a trademark, trade name or souvenir marking.

Comment: One commenter suggests that Customs in its final rule set forth some examples of cases where the non-origin reference would likely mislead or deceive the ultimate purchaser as to the actual country of origin of the article.

Response: Customs agrees that samples of cases where the non-origin type reference ''may mislead or deceive the ultimate purchaser as to the actual country of origin of the article'' would assist the importing community in better understanding the proper use of § 134.46. Therefore Customs offers the following examples of non-origin markings which Customs consistently has ruled to be misleading or deceiving to an ultimate purchaser, thus triggering the requirements of § 134.46 that the country of origin appear in close proximity and in comparable size lettering to the non-origin marking preceded by the words ''Made in,'' ''Product of,'' or other words of similar meaning. In each of these examples, the country of origin of the imported article is foreign.

Example 1. ''A product of ABC Corp., Chicago, Illinois.''
Example 2. ''Manufactured by ABC Corp., California, U.S.A.''
Example 3. ''Manufactured and Distributed by ABC, Inc., Denver, Colorado.''
Example 4. ''Packed for ABC Corp., Greenville, South Carolina.''

Comments Opposing Customs Proposed Regulation

Comment: One commenter who opposed Customs proposed regulation believes that finalization of the proposed amendments would be ill-advised. This commenter urges Customs either to withdraw the proposed amendment in its entirety or to modify the amendment to maintain the existing proximity and lettering comparability requirements in cases where the reference to the U.S. is made in the context of a statement relating to any aspect of the production or distribution of the product (*e.g.*, ''Designed in U.S.A.,'' ''Made for XYZ Corp., California, U.S.A.,'' or ''Distributed by ABC, Inc., Colorado, U.S.A.''). Specifically, the commenter is concerned that the FTC's stringent policy of generally limiting the use of ''Made in U.S.A.'' claims to those products that are ''all or virtually all'' of U.S. content effectively prohibits U.S. firms which add a substantial percentage of a product's value in the U.S. from labelling it as U.S. origin. At the same time, importers are regularly permitted by Customs to label wholly foreign-made products with inconspicuous statements of the foreign origin, although these products may be festooned with American flags, brand names which expressly refer to the U.S., or statements (*e.g.*, ''Designed in U.S.A.,'' ''Made for [U.S. importer's name and address]''), which could mislead the consumer into assuming that the article was produced in the U.S. The only way to ensure that such statements regarding operations performed in the U.S. do not mislead consumers is to insist that they be coupled with the required country of origin marking in accordance with § 134.46. Furthermore, if Customs decides to proceed with the proposal or some variation of it, Customs should do so only after the conclusion of the FTC's workshop and the FTC's larger review proceeding, so that relevant information concerning consumer perception gathered in the FTC proceeding can be considered by Customs in connection with the proposed amendment to § 134.46.

Response: Customs agrees that references to the U.S. made in the context of a statement relating to any aspect of the production or distribution of the products, such as ''Designed in U.S.A.,'' ''Made for XYZ Corp., California, U.S.A.,'' or ''Distributed by ABC Inc., Colorado, U.S.A.,'' are misleading to the ultimate purchaser and would still require country of origin marking in accordance with § 134.46, even as amended by the proposal. Therefore, Customs disagrees with the idea that these types of markings would be allowed under the proposed amendment to § 134.46. In the prior comment analysis, these types of statements have been cited as examples of misleading and deceptive statements triggering the special marking requirements of § 134.46. Also, Customs does not agree that it is necessary to consider the FTC's review of consumer perception gathered during the FTC's ''Made in USA'' workshop in making its decision as to the issuance of the final rule amending § 134.46. Customs believes that determining whether a non-origin type reference ''may mislead or deceive an ultimate purchaser as to the actual origin of the article'' should be limited to the mark itself and its effect on the ultimate purchaser, not based upon extrinsic evidence of consumer perception. If Customs were required to review information about consumer perception when making a determination as to whether the non-origin reference may be misleading or deceiving to the ultimate purchaser, rather than just reviewing the mark itself as is Customs present practice, this could result in long delays in merchandise being released.

Comment: One commenter opposing Customs proposal believes that Customs should tighten the enforcement of the country of origin marking regulations, rather than make them more lenient.

Response: Customs does not agree that adopting the proposed amendment would make the marking requirements for imported foreign articles more lenient. Customs has consistently applied the standard of ''whether the non-origin reference may mislead or deceive an ultimate purchaser as to the actual origin'' in practice and in its rulings when determining whether a non-origin type reference triggers the special marking requirements of § 134.46. As a general rule, whenever § 134.46 is applicable, the article already contains at least one country of origin marking. This section has triggered additional markings on an automatic basis. The only difference adopting the proposed amendment will make is that the standard that Customs has been applying will be codified so the public will be informed and have knowledge of it. The intent of the marking statute is to indicate to the

ultimate purchaser the country of origin of a foreign article and at the same time protect an ultimate purchaser from misleading or deceptive non-origin type references. The proposed amendment to § 134.46 effectively accomplishes these goals. It also gives the Customs field offices discretion as to whether the stringent marking requirements of § 134.46 should be applied in situations where non-origin type references appearing on the article or its container are clearly not misleading or deceiving as to the actual origin of the imported article.

Comment: Another commenter opposes Customs proposed regulation because he believes that the proposed change would open the door to litigation due to differing opinions as to what is ''misleading or deceiving.'' This commenter observes that every time Customs sends out a Notice of Redelivery for a marking violation for merchandise which is marked with a country or locality other than the country or locality in which the merchandise was manufactured or produced, the recipient of that Notice will respond that the marking ''will'' not mislead or deceive the ultimate purchaser in the U.S.

Response: Customs disagrees that the proposal would open the door to litigation due to the differing opinions as to what is ''misleading or deceiving.'' The proposed amendment applies a standard based on whether the non-origin type reference ''may mislead or deceive an ultimate purchaser as to the actual country of origin of the article'' rather than ''will'' as the commenter mistakenly states, so that every case does not become a question of fact, as the commenter suggests.

Conclusion

In accordance with the analysis of comments above and after further consideration, Customs concludes that the proposed amendments to §§ 134.36(b) and 134.46 should be adopted as proposed. It is noted that certain editorial changes are made to § 134.46 which are not substantive in effect. It is also noted that Customs intends to issues a new Notice of Proposed Rulemaking regarding § 134.47, as discussed earlier.

Regulatory Reflexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this regulation eases the country of origin marking requirements and thus reduces the regulatory burden, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information: The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in Part 134

Customs duties and inspection, Labeling, Packaging and containers.

Amendment to the Regulations

For the reasons set forth in the preamble, part 134 of the Customs Regulations (19 CFR Part 134) is amended as set forth below.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.36 [Amended]

2. Section 134.36 is amended by revising its heading to read ''Inapplicablity of Marking Exception for Articles Processed by Importer'', removing the designation and heading of paragraph (a) and removing paragraph (b).

3. Section 134.46 is revised to read as follows:

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words ''United States,'' or ''American,'' the letters ''U.S.A.,'' any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by ''Made in,'' ''Product of,'' or other words of similar meaning.

George J. Weise,

Commissioner of Customs.

Approved: July 1, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–22034 Filed 8–19–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8730]

RIN 1545–AT32

Allocations of Depreciation Recapture Among Partners in a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation of depreciation recapture among partners in a partnership. The final regulations amend existing regulations to require that gain characterized as depreciation recapture be allocated, to the extent possible, to the partners who took the depreciation or amortization deductions. The final regulations affect partnerships (and their partners) that sell or dispose of certain depreciable or amortizable property.

DATES: These regulations are effective August 20, 1997. For dates of applicability of these regulations, see §§ 1.704–3(f) and 1.1245–1(e)(2)(iv).

FOR FURTHER INFORMATION CONTACT: Daniel J. Coburn, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) relating to the characterization and allocation of depreciation recapture among partners in a partnership. Section 1245 of the Internal Revenue Code requires taxpayers to recharacterize as ordinary income some or all of the gain on the disposition of certain types of business properties. The amount recharacterized as ordinary income (depreciation recapture) is the lesser of (1) the gain realized on the disposition, or (2) the total deductions allowed or allowable for depreciation or amortization from the property.

On December 12, 1996, the IRS published in the **Federal Register** (61

FR 65371) a notice of proposed rulemaking (REG–209762–95) to provide guidance on partnership allocations of depreciation recapture. Although a public hearing was scheduled for March 27, 1997, the IRS cancelled the hearing because it received no requests to speak.

Explanation of Provisions

I. General Background

The regulations provide guidance on allocating depreciation recapture among partners, including depreciation recapture attributable to contributed property.

The regulations provide that a partner's share of depreciation recapture is equal to the lesser of (1) the partner's share of total gain arising from the disposition of the property (gain limitation) or (2) the partner's share of depreciation or amortization from the property (as defined in paragraph (e)(2)(ii) of the regulations). This rule seeks to insure, to the extent possible, that a partner recognizes recapture on the disposition of property in an amount equal to the depreciation or amortization deductions from the property previously taken by the partner. Any depreciation recapture that is not allocated to a partner due to the gain limitation is allocated among those partners whose shares of total gain on the disposition of the property exceed their shares of depreciation or amortization from the property. This unallocated depreciation recapture is allocated among those partners in proportion to their relative shares of the total gain on the disposition of the property.

The regulations provide special rules for determining a partner's share of depreciation or amortization from contributed property subject to section 704(c). Under the regulations, a contributing partner's share of depreciation or amortization includes depreciation or amortization allowed or allowable prior to contribution. In addition, the regulations provide that curative and remedial allocations generally reduce the contributing partner's share of depreciation or amortization and increase the noncontributing partners' shares of depreciation or amortization.

II. Changes in Response to Comments

In response to comments, the regulations clarify the effect of curative and remedial allocations on the partners' shares of depreciation or amortization from contributed property. The examples now demonstrate that curative and remedial allocations can reduce the contributing partner's share of depreciation or amortization to zero, but not below zero. Once the contributing partner's share of depreciation or amortization has been reduced to zero, the curative or remedial allocations do not affect the contributing partner's share of depreciation or amortization. However, the curative or remedial allocations continue to affect the noncontributing partners' shares of depreciation or amortization.

The regulations have also been revised to make it clear that these amendments to the section 1245 regulations only affect how the depreciation recapture recognized by the partnership is allocated among the partners; they do not affect the computation of depreciation recapture at the partnership level. The regulations recognize that even absent a gain limitation, remedial and curative allocations may cause the total of the partners' shares of depreciation to exceed the amount of depreciation recapture recognized at the partnership level. In such a case, the partnership's depreciation recapture with respect to the contributed property is to be allocated among the partners in proportion to their relative shares of depreciation or amortization with respect to that property. However, no partner's share of depreciation recapture from the property can exceed that partner's share of the total gain arising from the disposition of the property.

Example 2 of paragraph (e)(2)(iii) of the regulations has also been revised to demonstrate more thoroughly how recapture is allocated when a partner's share of depreciation recapture is capped by the partner's share of gain from the disposition of the property. As illustrated in the example, some partnerships may find it necessary to make multiple reallocations of depreciation recapture from a property if allocations under the general rule (allocations in proportion to the remaining partners' shares of gain from the disposition of the property) cause a remaining partner's share of depreciation to exceed the partner's share of gain from the disposition of the property.

One commentator requested that the regulations allow but not require that partnerships allocate depreciation recapture in proportion to the partners' shares of the gain from the disposition of the property. This change was not made because the IRS and Treasury continue to believe that matching depreciation recapture allocations to depreciation allocations most appropriately carries out the policies underlying section 1245.

A number of terminology and stylistic changes have also been made to these regulations. These changes were made for purposes of economy and should not be interpreted as substantive changes.

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) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Daniel J. Coburn, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.704–3 is amended by:

(1) Adding new paragraph (a)(11).

(2) Revising paragraph (f).

The addition and revision read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(11) *Contributing and noncontributing partners' recapture shares.* For special rules applicable to the allocation of depreciation recapture with respect to property contributed by a partner to a partnership, see §§ 1.1245–1(e)(2) and 1.1250–1(f).

* * * * *

(f) *Effective date.* With the exception of paragraph (a)(11) of this section, this section applies to properties contributed

to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)*(f)* on or after December 21, 1993. Paragraph (a)(11) of this section applies to properties contributed by a partner to a partnership on or after August 20, 1997. However, partnerships may rely on paragraph (a)(11) of this section for properties contributed before August 20, 1997 and disposed of on or after August 20, 1997.

Par. 3. Section 1.1245–1 is amended by revising paragraph (e)(2) to read as follows:

§ 1.1245–1 General rule for treatment of gain from dispositions of certain depreciable property.

* * * * *

(e) * * *

(2)(i) Unless paragraph (e)(3) of this section applies, a partner's distributive share of gain recognized under section 1245(a)(1) by the partnership is equal to the lesser of the partner's share of total gain from the disposition of the property (gain limitation) or the partner's share of depreciation or amortization with respect to the property (as determined under paragraph (e)(2)(ii) of this section). Any gain recognized under section 1245(a)(1) by the partnership that is not allocated under the first sentence of this paragraph (e)(2)(i) (excess depreciation recapture) is allocated among the partners whose shares of total gain from the disposition of the property exceed their shares of depreciation or amortization with respect to the property. Excess depreciation recapture is allocated among those partners in proportion to their relative shares of the total gain (including gain recognized under section 1245(a)(1)) from the disposition of the property that is allocated to the partners who are not subject to the gain limitation. See *Example* 2 of paragraph (e)(2)(iii) of this section.

(ii)(A) Subject to the adjustments described in paragraphs (e)(2)(ii)(B) and (e)(2)(ii)(C) of this section, a partner's share of depreciation or amortization with respect to property equals the total amount of allowed or allowable depreciation or amortization previously allocated to that partner with respect to the property.

(B) If a partner transfers a partnership interest, a share of depreciation or amortization must be allocated to the transferee partner as it would have been allocated to the transferor partner. If the partner transfers a portion of the partnership interest, a share of depreciation or amortization proportionate to the interest transferred must be allocated to the transferee partner.

(C)(*1*) A partner's share of depreciation or amortization with respect to property contributed by the partner includes the amount of depreciation or amortization allowed or allowable to the partner for the period before the property is contributed.

(*2*) A partner's share of depreciation or amortization with respect to property contributed by a partner is adjusted to account for any curative allocations. (See § 1.704–3(c) for a description of the traditional method with curative allocations.) The contributing partner's share of depreciation or amortization with respect to the contributed property is decreased (but not below zero) by the amount of any curative allocation of ordinary income to the contributing partner with respect to that property and by the amount of any curative allocation of deduction or loss (other than capital loss) to the noncontributing partners with respect to that property. A noncontributing partner's share of depreciation or amortization with respect to the contributed property is increased by the noncontributing partner's share of any curative allocation of ordinary income to the contributing partner with respect to that property and by the amount of any curative allocation of deduction or loss (other than capital loss) to the noncontributing partner with respect to that property. The partners' shares of depreciation or amortization with respect to property from which curative allocations of depreciation or amortization are taken is determined without regard to those curative allocations. See *Example* 3(iii) of paragraph (e)(2)(iii) of this section.

(*3*) A partner's share of depreciation or amortization with respect to property contributed by a partner is adjusted to account for any remedial allocations. (See § 1.704–3(d) for a description of the remedial allocation method.) The contributing partner's share of depreciation or amortization with respect to the contributed property is decreased (but not below zero) by the amount of any remedial allocation of income to the contributing partner with respect to that property. A noncontributing partner's share of depreciation or amortization with respect to the contributed property is increased by the amount of any remedial allocation of depreciation or amortization to the noncontributing partner with respect to that property. See *Example* 3(iv) of paragraph (e)(2)(iii) of this section.

(*4*) If, under paragraphs (e)(2)(ii)(C)(*2*) and (e)(2)(ii)(C)(*3*) of this section, the partners' shares of depreciation or amortization with respect to a contributed property exceed the adjustments reflected in the adjusted basis of the property under § 1.1245–2(a) at the partnership level, then the partnership's gain recognized under section 1245(a)(1) with respect to that property is allocated among the partners in proportion to their relative shares of depreciation or amortization (subject to any gain limitation that might apply).

(*5*) This paragraph (e)(2)(ii)(C) also applies in determining a partner's share of depreciation or amortization with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*).

(iii) *Examples.* The application of this paragraph (e)(2) may be illustrated by the following examples:

Example 1. Recapture allocations. (i) *Facts.* A and B each contribute $5,000 cash to form AB, a general partnership. The partnership agreement provides that depreciation deductions will be allocated 90 percent to A and 10 percent to B, and, on the sale of depreciable property, A will first be allocated gain to the extent necessary to equalize A's and B's capital accounts. Any remaining gain will be allocated 50 percent to A and 50 percent to B. In its first year of operations, AB purchases depreciable equipment for $5,000. AB depreciates the equipment over its 5-year recovery period and elects to use the straight-line method. In its first year of operations, AB's operating income equals its expenses (other than depreciation). (To simplify this example, AB's depreciation deductions are determined without regard to any first-year depreciation conventions.)

(ii) *Year 1.* In its first year of operations, AB has $1,000 of depreciation from the partnership equipment. In accordance with the partnership agreement, AB allocates 90 percent ($900) of the depreciation to A and 10 percent ($100) of the depreciation to B. At the end of the year, AB sells the equipment for $5,200, recognizing $1,200 of gain ($5,200 amount realized less $4,000 adjusted tax basis). In accordance with the partnership agreement, the first $800 of gain is allocated to A to equalize the partners' capital accounts, and the remaining $400 of gain is allocated $200 to A and $200 to B.

(iii) *Recapture allocations.* $1,000 of the gain from the sale of the equipment is treated as section 1245(a)(1) gain. Under paragraph (e)(2)(i) of this section, each partner's share of the section 1245(a)(1) gain is equal to the lesser of the partner's share of total gain recognized on the sale of the equipment or the partner's share of total depreciation with respect to the equipment. Thus, A's share of the section 1245(a)(1) gain is $900 (the lesser of A's share of the total gain ($1,000) and A's share of depreciation ($900)). B's share of the section 1245(a)(1) gain is $100 (the lesser of B's share of the total gain ($200) and B's share of depreciation ($100)). Accordingly, $900 of the $1,000 of total gain allocated to A is treated as ordinary income and $100 of

the $200 of total gain allocated to B is treated as ordinary income.

Example 2. Recapture allocation subject to gain limitation. (i) *Facts.* A, B, and C form general partnership ABC. The partnership agreement provides that depreciation deductions will be allocated equally among the partners, but that gain from the sale of depreciable property will be allocated 75 percent to A and 25 percent to B. ABC purchases depreciable personal property for $300 and subsequently allocates $100 of depreciation deductions each to A, B, and C, reducing the adjusted tax basis of the property to $0. ABC then sells the property for $440. ABC allocates $330 of the gain to A (75 percent of $440) and allocates $110 of the gain to B (25 percent of $440). No gain is allocated to C.

(ii) *Application of gain limitation.* Each partner's share of depreciation with respect to the property is $100. C's share of the total gain from the disposition of the property, however, is $0. As a result, under the gain limitation provision in paragraph (e)(2)(i) of this section, C's share of section 1245(a)(1) gain is limited to $0.

(iii) *Excess depreciation recapture.* Under paragraph (e)(2)(i) of this section, the $100 of section 1245(a)(1) gain that cannot be allocated to C under the gain limitation provision (excess depreciation recapture) is allocated to A and B (the partners not subject to the gain limitation at the time of the allocation) in proportion to their relative shares of total gain from the disposition of the property. A's relative share of the total gain allocated to A and B is 75 percent ($330 of $440 total gain). B's relative share of the total gain allocated to A and B is 25 percent ($110 of $440 total gain). However, under the gain limitation provision of paragraph (e)(2)(i) of this section, B cannot be allocated 25 percent of the excess depreciation recapture ($25) because that would result in a total allocation of $125 of depreciation recapture to B (a $100 allocation equal to B's share of depreciation plus a $25 allocation of excess depreciation recapture), which is in excess of B's share of the total gain from the disposition of the property ($110). Therefore, only $10 of excess depreciation recapture is allocated to B and the remaining $90 of excess depreciation recapture is allocated to A. A is not subject to the gain limitation because A's share of the total gain ($330) still exceeds A's share of section 1245(a)(1) gain ($190). Accordingly, all $110 of the total gain allocated to B is treated as ordinary income ($100 share of depreciation allocated to B plus $10 of excess depreciation recapture) and $190 of the total gain allocated to A is treated as ordinary income ($100 share of depreciation allocated to A plus $90 of excess depreciation recapture).

Example 3. Determination of partners' shares of depreciation with respect to contributed property. (i) *Facts.*C and D form partnership CD as equal partners. C contributes depreciable personal property C1 with an adjusted tax basis of $800 and a fair market value of $2,800. Prior to the contribution, C claimed $200 of depreciation from C1. At the time of the contribution, C1 is depreciable under the straight-line method and has four years remaining on its 5-year recovery period. D contributes $2,800 cash, which CD uses to purchase depreciable personal property D1, which is depreciable over seven years under the straight-line method. (To simplify the example, all depreciation is determined without regard to any first-year depreciation conventions.)

(ii) *Traditional method.* C1 generates $700 of book depreciation (¼ of $2,800 book value) and $200 of tax depreciation (¼ of $800 adjusted tax basis) each year. C and D will each be allocated $350 of book depreciation from C1 in year 1. Under the traditional method of making section 704(c) allocations, D will be allocated the entire $200 of tax depreciation from C1 in year 1. D1 generates $400 of book and tax depreciation each year (1⁄7 of $2,800 book value and adjusted tax basis). C and D will each be allocated $200 of book and tax depreciation from D1 in year 1. As a result, after the first year of partnership operations, C's share of depreciation with respect to C1 is $200 (the depreciation taken by C prior to contribution) and D's share of depreciation with respect to C1 is $200 (the amount of tax depreciation allocated to D). C and D each have a $200 share of depreciation with respect to D1. At the end of four years, C's share of depreciation with respect to C1 will be $200 (the depreciation taken by C prior to contribution) and D's share of depreciation with respect to C1 will be $800 (four years of $200 depreciation per year). At the end of four years, C and D will each have an $800 share of depreciation with respect to D1 (four years of $200 depreciation per year).

(iii) *Effect of curative allocations.* (A) *Year 1.* If the partnership elects to make curative allocations under § 1.704–3(c) using depreciation from D1, the results will be the same as under the traditional method, except that $150 of the $200 of tax depreciation from D1 that would be allocated to C under the traditional method will be allocated to D as additional depreciation with respect to C1. As a result, after the first year of partnership operations, C's share of depreciation with respect to C1 will be reduced to $50 (the total depreciation taken by C prior to contribution ($200) decreased by the amount of the curative allocation to D ($150)). D's share of depreciation with respect to C1 will be $350 (the depreciation allocated to D under the traditional method ($200) increased by the amount of the curative allocation to D ($150)). C and D will each have a $200 share of depreciation with respect to D1.

(B) *Year 4.* At the end of four years, C's share of depreciation with respect to C1 will be reduced to $0 (the total depreciation taken by C prior to contribution ($200) decreased, but not below zero, by the amount of the curative allocations to D ($600)), and D's share of depreciation with respect to C1 will be $1,400 (the total depreciation allocated to D under the traditional method ($800) increased by the amount of the curative allocations to D ($600)). However, CD's section 1245(a)(1) gain with respect to C1 will not be more than $1,000 (CD's tax depreciation ($800) plus C's tax depreciation prior to contribution ($200)). Under paragraph (e)(2)(ii)(C)(*4*) of this section, because the partners' shares of depreciation with respect to C1 exceed the adjustments reflected in the property's adjusted basis, CD's section 1245(a)(1) gain will be allocated in proportion to the partners' relative shares of depreciation with respect to C1. Because C's share of depreciation with respect to C1 is $0, and D's share of depreciation with respect to C1 is $1,400, all of CD's $1,000 of section 1245(a)(1) gain will be allocated to D. At the end of four years, C and D will each have an $800 share of depreciation with respect to D1 (four years of $200 depreciation per year).

(iv) *Effect of remedial allocations.* (A) *Year 1.* If the partnership elects to make remedial allocations under § 1.704–3(d), there will be $600 of book depreciation from C1 in year 1. (Under the remedial allocation method, the amount by which C1's book basis ($2,800) exceeds its tax basis ($800) is depreciated over a 5-year life, rather than a 4-year life.) C and D will each be allocated one-half ($300) of the total book depreciation. As under the traditional method, D will be allocated all $200 of tax depreciation from C1. Because the ceiling rule would cause a disparity of $100 between D's book and tax allocations of depreciation, D will also receive a $100 remedial allocation of depreciation with respect to C1, and C will receive a $100 remedial allocation of income with respect to C1. As a result, after the first year of partnership operations, D's share of depreciation with respect to C1 is $300 (the depreciation allocated to D under the traditional method ($200) increased by the amount of the remedial allocation ($100)). C's share of depreciation with respect to C1 is $100 (the total depreciation taken by C prior to contribution ($200) decreased by the amount of the remedial allocation of income ($100)). C and D will each have a $200 share of depreciation with respect to D1.

(B) *Year 5.* At the end of five years, C's share of depreciation with respect to C1 will be $0 (the total depreciation taken by C prior to contribution ($200) decreased, but not below zero, by the total amount of the remedial allocations of income to C ($600)). D's share of depreciation with respect to C1 will be $1,400 (the total depreciation allocated to D under the traditional method ($800) increased by the total amount of the remedial allocations of depreciation to D ($600)). However, CD's section 1245(a)(1) gain with respect to C1 will not be more than $1,000 (CD's tax depreciation ($800) plus C's tax depreciation prior to contribution ($200)). Under paragraph (e)(2)(ii)(C)(*4*) of this section, because the partners' shares of depreciation with respect to C1 exceed the adjustments reflected in the property's adjusted basis, CD's section 1245(a)(1) gain will be allocated in proportion to the partners' relative shares of depreciation with respect to C1. Because C's share of depreciation with respect to C1 is $0, and D's share of depreciation with respect to C1 is $1,400, all of CD's $1,000 of section 1245(a)(1) gain will be allocated to D. At the end of five years, C and D will each have a $1,000 share of depreciation with respect to D1 (five years of $200 depreciation per year).

(iv) *Effective date.* This paragraph (e)(2) is effective for properties acquired by a partnership on or after August 20,

1997. However, partnerships may rely on this paragraph (e)(2) for properties acquired before August 20, 1997 and disposed of on or after August 20, 1997.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: July 8, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–22019 Filed 8–19–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC 30–1–9645a: FRL–5877–1]

Approval and Promulgation of State Implementation Plan, South Carolina: Addition of Supplement C to the Air Quality Modeling Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 6, 1996, the South Carolina Department of Health and Environmental Control submitted revisions to the South Carolina State Implementation Plan (SIP) involving revisions to 61–62.5 Standard 7, Prevention of Significant Deterioration to add Supplement C to air quality modeling guidelines. This revision updates the South Carolina SIP to meet the latest EPA modeling requirements. Therefore, these revisions are being approved into the SIP.

DATES: This action is effective October 20, 1997 unless adverse or critical comments are received by September 19, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Region 4 Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), US Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street Atlanta, Georgia 30303.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: On May 6, 1996, the State of South Carolina Department of Health and Environmental Control submitted a notice to amend Section IV, Part D, Air Quality Models, of Regulation 61–62.5, Standard 7. These regulations were revised by adding Supplement C to the previously approved air quality guidelines. Supplement C incorporates improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC) model, adopts a solar radiation/delta T (SRDT) method for estimating atmospheric stability categories, and adopts a new screening approach for assessing annual NO_2 impacts.

Final Action

EPA is approving South Carolina's notice submitted on May 6, 1996, for incorporation into the South Carolina SIP. The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 20, 1997 unless, by September 19, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 20, 1997.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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 110 and subchapter I, part D of the Clean Air Act 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 EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S.EPA., 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

C. Unfunded Mandates

Under sections 202, of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to

accompany any final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $ 100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in The United States Court of Appeals for the appropriate circuit by October 20, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 22, 1997.

R.F. McGhee,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Authority: 42 U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. In § 52.2120(c), the table is amended by adding an entry for Supplement C under the entry Regulation No. 62.5, Section III, at the end of Standard No. 7 in the ''Air pollution Control Regulations for South Carolina'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal Register notice
* * *	*	*	*	*
Regulations No. 62.5 Air Pollution Control Standards				
* * *	*	*	*	*
Section III Enforceability				
Standard No. 7 Prevention of Significant Deterioration				
* * *	*	*	*	*
Supplement C	.....	05/26/96	August 20, 1997	[Insert citation for page No. of publication]

* * * * *

[FR Doc. 97–21919 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–029–1029; FRL–5875–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions to Missouri's State Implementation Plan (SIP) concerning Missouri rules 10 CSR 10–2.260 and 10 CSR 10–5.220, ''Control of Petroleum Liquid Storage, Loading, and Transfer.'' The purpose of these revisions is to modify the required testing periods for petroleum delivery vessels in the Kansas City metropolitan area and in the St. Louis nonattainment area. These revisions are designed to reduce volatile organic compound emissions from the loading and unloading of gasoline delivery vessels during the ozone season. The reduction in emissions is part of the state's plan under the Clean Air Act (CAA) to reduce ozone levels in the St. Louis nonattainment area. This action will also ensure progress toward improved air quality in Kansas City.

DATES: This rule is effective on September 19, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION: On December 27, 1996 (61 FR 68199), the EPA proposed to approve an

amendment to Missouri rules 10 CSR 10–2.260 and 10 CSR 10–5.220, ''Control of Petroleum Liquid, Storage, Loading, and Transfer.'' Revisions to 10 CSR 10–2.260 are being submitted to help Kansas City maintain the ozone standard. Revisions to 10 CSR 10–2.250 are being submitted as part of the state's plan to attain the ozone standard in St. Louis.

The amendment to Missouri rule 10 CSR 10–2.260 (specific to the Kansas City metropolitan area) changes the period for testing tank trucks that have rubber hoods from April 1 through July 1 to January 1 through May 30 of each year. The purpose of requiring tank trucks with rubber hoods to be tested according to the aforementioned schedule is to give the state an opportunity to identify problems or possible leaks in the gasoline transfer process before the ozone season. The testing period for aluminum hoods will occur throughout each year. This schedule provides the state the opportunity to test trucks before the ozone season, but also provides the flexibility to continue testing throughout the year.

In addition, the revisions add two forms for reporting. One form is a leak test application which must be completed by the owner or operator of the facility and provided to the director of the Missouri Department of Natural Resources. This form provides documentation certifying that testing requirements have been met. The second form is a request for exemption form which must be submitted by facility personnel to be exempt for the testing requirements.

The amendment to Missouri rule 10 CSR 10–5.220 (specific to the St. Louis nonattainment area) requires bulk plants to use two new forms. One form requires bulk plants to report the throughput when they apply for an exemption. This form requires information documenting that facilities are eligible facilities for an exemption. The second revision requires sources to submit an application form to obtain a sticker that certifies passage of required tests by gasoline tank trucks.

Response to Comments

Comment: The EPA received one comment with regard to this proposal. The comment, which was submitted by Farmland Industries, generally supports the proposed rulemaking. However, the commenter was concerned that the change in the state regulation would require companies to test their tank trucks in Missouri even if the testing requirement may have been fulfilled in another state.

Response: The EPA understands Farmland's concerns and encourages consistency among states where possible. However, if state regulations meet Federal requirements as specified in section 110 of the Act and related provisions, the EPA is required to approve the rule. The EPA has determined that the rule meets those requirements, and is, therefore, approving the rule.

In this particular situation, Missouri does provide some flexibility regarding testing in other states. According to the Missouri rule, if an owner or operator of a gasoline delivery vessel can demonstrate, to the satisfaction of the director, that the vessel has passed a comparable annual leak test in another state, the owner or operator shall be deemed to have satisfied the requirements of the Missouri rule. The other state's leak test program must require the same gauge pressure and test procedures, and the test must be conducted during the same time period as required under the Missouri rule. For additional background on this action and the EPA's detailed rationale for approval, please refer to the Technical Support Document of the aforementioned notice of proposed rulemaking (61 FR 68199).

I. Final Action

The EPA is taking final action to approve amendments to rules 10 CSR 10–2.260 and 10 CSR 10–5.220 as a revision to the Missouri SIP.

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 the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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, the Administrator certifies 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)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 20, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 31, 1997.

William Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(99) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(99) Revisions to the ozone attainment plan were submitted by the Governor on February 1, 1996.

(i) Incorporation by reference.

(A) Missouri Rule 10 CSR 10–2.260, ''Control of Petroleum Liquid Storage, Loading, and Transfer,'' effective December 30, 1995.

(B) Missouri Rule 10 CSR 10–5.220, ''Control of Petroleum Liquid Storage, Loading, and Transfer,'' effective December 30, 1995.

[FR Doc. 97–22064 Filed 8–19–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 488

[HSQ–156–CN]

RIN 0938–

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities

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

ACTION: Correcting amendment.

SUMMARY: In the November 10, 1994 issue of the **Federal Register** (FR Doc. 94–27703) (59 FR 56116), we established rules for survey of skilled nursing facilities that participate in the Medicare program, and nursing facilities that participate in the Medicaid program. We also established remedies that we impose on facilities that do not comply with Federal participation requirements, as alternatives to program termination. This amendment corrects an error in that document.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Lochary, (410) 786–6770.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1994, we published in the **Federal Register**, at 59 FR 56116, a final rule that established significant revisions to the process we use to survey skilled nursing facilities that participate in the Medicare program, and nursing facilities that participate in the Medicaid program. The rule also established, as alternatives to, or in addition to, termination, remedies that we impose on facilities that do not comply with the Federal participation requirements.

On September 28, 1995, we published in the **Federal Register**, at 60 FR 50115, a correction notice that made many corrections to the final rule. One of those corrections was to § 488.434(a)(1).

Need for Additional Correction

Sections 488.434(a)(1) and 488.436(a) both refer to a HCFA civil money penalty written notice. When we corrected an inadvertent error in terminology in § 488.434(a)(1), we failed to make a corresponding change in terminology in § 488.436(a). We are now making that correction to § 488.436(a) by removing the words ''of intent to impose'' from the phrase ''notice of intent to impose the civil money penalty'' and adding the word ''imposing'' to the phrase. Therefore, the phrase ''notice of intent to impose the civil money penalty'' is corrected to read ''notice imposing the civil money penalty.''

List of Subjects in 42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR Part 488 is corrected by making the following correcting amendment:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

§ 488.436 [Corrected]

2. In § 488.436 paragraph (a), the phrase ''notice of intent to impose the civil money penalty'' is corrected to read ''notice imposing the civil money penalty''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 11, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–22036 Filed 8–19–97; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 253

[DFARS Case 97–D013]

Defense Federal Acquisition Regulation Supplement; Contract Action Reporting

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise DD Form 350 and DD Form 1057 contract action reporting requirements for compliance with the Clinger-Cohen Act of 1996 and for enhancement of data collection procedures.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Telephone (703) 602–0131; telefax (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the internal DoD contract data reporting system to enable reporting of data required by the Clinger-Cohen Act of 1996 (Public Law 104–106) and to enhance data collection procedures. The rule improves reporting instructions pertaining to contingency operations, cost or pricing data requirements, and blanket purchase agreements; and adds reporting instructions pertaining to the use of simplified acquisition procedures for certain commercial items pursuant to FAR Subpart 13.6, and the award of contracts in support of Phase III of the Small Business Innovation Research Program.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D013 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any reporting or recordkeeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 204 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 253 continues to read as follows.

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670–2 is amended by revising paragraph (c) to read as follows:

204.670–2 Reportable contracting actions.

* * * * *

(c) Summarize on the monthly DD Form 1057, in accordance with the instructions in 253.204–71(a)(3), contracting actions that support a contingency operation (see 213.000) and that obligate or deobligate funds exceeding $25,000 but not exceeding $200,000.

* * * * *

PART 253—FORMS

3. Section 253.204–70 is amended by revising paragraphs (b)(10)(i), (b)(13)(i)(C), (b)(13)(i)(G), (c)(2), (c)(4)(xi), (d)(5)(vii)(A), and (e)(4); and adding paragraphs (b)(14), (d)(5)(vii)(D), and (e)(5) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(b) * * *

(10) * * *

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract as defined at FAR 17.103. Do not report contracts containing options as multiyear unless the definition at FAR 17.103 applies to the contract.

* * * * *

(13) * * *

(i) * * *

(C) *Code 4—Order under an Agreement.* Enter code 4 when the contracting action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when the contract is created by issuing the order. A call under a blanket purchase agreement associated with a Federal Supply Schedule, pursuant to FAR 13.202(c)(3), is coded 6. A call under other blanket purchase agreements, pursuant to FAR subpart 13.2, is coded 9. When the contracting action is a modification to an order described in code 4 instructions, enter code 4 in B13A.

* * * * *

(G) *Code 9—Purchase Order/Call.* Enter code 9 if the contracting action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10), is an award pursuant to FAR part 13, except when the contracting action is a blanket purchase agreement call pursuant to FAR 13.202(c)(3) (see code 6). When the contracting action is a modification to a purchase order/call described in code 9 instructions, enter code 9 in B13A.

* * * * *

(14) BLOCK B14, CICA APPLICABILITY. Enter one of the following codes;

(i) *Code A—Pre-CICA.* Enter code A if the action resulted from a solicitation issued before April 1, 1985. Modifications within the original scope of work of such awards and orders under pre-CICA indefinite delivery type contracts are reported as pre-CICA. In case of modifications issued on or after April 1, 1985, coded A in B13 or B13D, as appropriate, CICA is applicable to the modification, and these actions shall be coded B in Block B14.

(ii) *Code B—CICA Applicable.* Enter code B if the action resulted from a solicitation issued on or after April 1, 1985, and none of the following codes applies.

(iii) *Code C—Simplified Acquisition Procedures Other than FAR subpart 13.6.* Enter code C if the action resulted from use of the procedures in FAR part 13, other than those in subpart 13.6.

(iv) *Code D—Simplified Procedures Pursuant to FAR subpart 13.6.* Enter code D if the action resulted from use of the procedures in FAR subpart 13.6.

(c) * * *

(2) Do not complete Part C if the contracting action is an action with a government agency, i.e., Block B5B (Government Agency) is coded Y (Yes). If Block B13A is coded 6, do not complete any blocks in Part C except Block C3, and Blocks C13A and C13B when they apply.

* * * * *

(4) * * *

(xi) BLOCK C11, CERTIFIED COST OR PRICING DATA. Enter one of the following codes when Block B1B is coded A. Otherwise, leave blank.

(A) *Code Y—Yes—Obtained.* Enter code Y when cost or pricing data were obtained (see FAR 15.804–2) and certified in accordance with FAR 15.804–4.

(B) *Code N—No—Not Obtained.* Enter code N when neither code Y nor code W applies.

(C) *Code W—Not Obtained—Waived.* Enter code W when cost or pricing data were not obtained because the requirement was waived (see FAR 15.804–1(a)(3) and 215.804–1(b)(4)).

* * * * *

(d) * * *

(5) * * *

* * * * *

(vii) * * *

(A) *Code A—Not a SBIR Program Phase I/II/III.* Enter Code A if the action is not in support of a Phase I, II, or III SBIR program.

* * * * *

(D) *Code D—SBIR Program Phase III Action.* Enter code D if the action is

related to a Phase III contract in support of the SBIR Program.

* * * * *

(e) * * *

(4) Block E4—CONTINGENCY OPERATION. Enter code Y in Block E4 if the contracting action is in support of a contingency operation, as defined in 213.101, and the action exceeds the simplified acquisition threshold for contingency operations (see 213.000). Otherwise, leave Block E4 blank.

(5) BLOCK E5—BLOCK E8—RESERVED.

* * * * *

4. Section 253.204–71 is amended by revising paragraph (a)(3) to read as follows:

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

(a) * * *

(3) Report actions of $25,000 or less in support of a contingency operation in accordance with the instructions in paragraphs (c) through (j) of this subsection. Report actions exceeding $25,000 but not exceeding $200,000 in support of a contingency operation (see 213.000) on the monthly DD Form 1057 as follows:

(i) Section B; the applicable lines are 5, 5a, 7, and 7a.

(ii) Section C; the applicable lines are 1 and 1c, 2 and 2c, and 3 and 3c.

(iii) Sections D, E, and F, are not applicable.

(iv) Section G; complete fully.

* * * * *

[FR Doc. 97–21888 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 211, 242, and 252

[DFARS Case 97–D014]

Defense Federal Acquisition Regulation Supplement; Single Process Initiative

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to facilitate the use of management or manufacturing processes that have been accepted by DoD under the Single Process Initiative (SPI) for use in lieu of military or Federal specifications and standards.

DATES: Effective date: August 20, 1997.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 20, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, *Attn:* Mr. Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. *Telefax number:* (703) 602–0350. Please cite DFARS Case 97–D014 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a new section at DFARS 211.273 and a new contract clause at DFARS 252.211–7005 to encourage offerors to propose the use of SPI processes in lieu of military or Federal specifications and standards cited in DoD solicitations; and establishes that, in procurements of previously developed items, SPI processes shall be considered valid replacements for military or Federal specifications and standards, absent a specific determination to the contrary.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. The interim rule amends the DFARS to implement the policy set forth in a memorandum issued by the Under Secretary of Defense (Acquisition and Technology) on April 30, 1997, with regard to SPI and new contracts. This interim rule is necessary to permit the Government and industry to realize, as soon as possible, the significant cost savings anticipated from allowing contractors to use previously accepted facilitywide management and manufacturing processes in lieu of military or Federal specifications and standards. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it is estimated that, of the 180 contractors presently participating in SPI, less than 5 percent are small businesses. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D014 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, et seq.) applies because the interim rule contains a new information collection requirement. Under the emergency processing provisions of 44 U.S.C. 3507(j) as implemented at 5 CFR 1320.13, the Office of Management and Budget (OMB) has granted emergency approval of the information collection requirement through December 31, 1997, under OMB Control Number 0704–0398. The OMB approval required under 44 U.S.C. 3507(a)(2) will be obtained prior to publication of the final rule.

Comments

Comments are invited. In particular, comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the collection of information;

c. Ways to enchance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the collection of information on respondents, including use of appropriate automated collection techniques or other forms of information technology.

Title, Associated Form, OMB Control Number

DFARS Section 211.273, Substitutions for Military or Federal Specifications and Standards, and related clause at 252.211–7005, Substitutions for Military or Federal Specifications and Standards; OMB Control Number 0704–0398.

Needs and Uses

The information collection permits offerors to propose SPI processes in lieu of military or Federal specifications and standards cited in DoD solicitations for previously developed items. The information will be used by the Government to identify and verify Government acceptance of an SPI

process as a valid replacement for a military or Federal specification or standard cited in a solicitation.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 540.

Number of Respondents: 180.

Responses Per Respondent: 3.

Annual Responses: 540.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Respondents are offerors responding to DoD solicitations for previously developed items that cite military or Federal specifications or standards, when the offeror has a management or manufacturing process that has been previously accepted by DoD, under SPI, as a valid replacement for a military or Federal specification or standard.

List of Subjects in 48 CFR Parts 211, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 211, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 211, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. Sections 211.273 through 211.273–4 are added to read as follows:

211.273 Substitutions for military or Federal specifications and standards.

211.273–1 Definition.

''SPI process,'' as used in this section, is defined in the clause at 252.211–7005, Substitutions for Military or Federal Specifications and Standards.

211.273–2 Policy.

(a) Under the Single Process Initiative (SPI), DoD accepts SPI processes in lieu of specific military or Federal specifications or standards that specify a management or manufacturing process.

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives from the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

(c) In procurements of previously developed items, SPI processes that previously were accepted by the Management Council shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary (see 211.273–3(c)).

211.273–3 Procedures.

(a) Solicitations for previously developed items shall encourage offerors to identify SPI processes for use in lieu of military or Federal specifications and standards cited in the solicitation. The solicitation shall require an offeror proposing to use an SPI process to include, in its response to the solicitation, documentation of the Government acceptance of the process.

(b) Contracting officers shall ensure that—

(1) Concurrence of the requiring activity has been or will be obtained for any proposed substitutions prior to contract award; and

(2) Any necessary additional information regarding the SPI process identified in the proposal is obtained from the cognizant administrative contracting officer.

(c) Any determination that an SPI process is not acceptable for a specific procurement shall be made at the head of the contracting activity or program executive officer level. This authority may not be delegated.

211.273–4 Contract clause.

Use the clause at 252.211–7005, Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.302 is amended by adding paragraph (a) (S–70) to read as follows:

242.302 Contract administration functions.

(a) * * *

(S–70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements for SPI processes, when authorized by the affected components.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.211–7005 is added to read as follows:

252.211–7005 Substitutions for Military or Federal Specifications and Standards.

As prescribed in 211.273–4, use the following clause:

SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (AUG 1997)

(a) *Definition.* ''SPI process,'' as used in this clause, means a management or manufacturing process that has been accepted previously by the Department of Defense under the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard. Under SPI, these processes are reviewed and accepted by a Management Council, which includes representatives from the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

(b) Offerors are encouraged to propose SPI processes in lieu of military or Federal specifications and standards cited in the solicitation.

(c) An offeror proposing to use an SPI process shall—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted, and the specific paragraph or other location in the solicitation where the military or Federal specification or standard is required;

(2) Provide a copy of the Department of Defense acceptance of the SPI process;

(3) Identify each facility at which the offeror proposes to use the specific SPI process; and

(4) Unless provided in response to paragraph (c)(2) of this clause, provide the name and telephone number of the cognizant Administrative Contracting Officers for each facility where the SPI process is proposed for use.

(d) Absent a determination at the head of the contracting activity or program executive officer level that an SPI process is not acceptable for this procurement, the Contractor shall use the following SPI processes in lieu of military or Federal specifications and standards:

(Offeror Insert Information for Each SPI Process)

SPI Process: _____

Facility: _____

Military or Federal Specification or Standard: _____

Affected Contract Line Item and Subline Item Number and Requirement Citation: _____

Cognizant Administrative Contracting Officer: _____

(End of clause)

[FR Doc. 97–21887 Filed 8–19–97–8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 96–D023]

Defense Federal Acquisition Regulation Supplement; Foreign Machine Tools and Powered and Non-Powered Valves

AGENCY: Department of Defense (DoD).

ACTION: Correction.

SUMMARY: The Department of Defense is issuing a correction to the final rule published at 61 FR 58488, November 15, 1996.

EFFECTIVE DATE: November 15, 1996.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, PDUSD (A&T) DP (DAR), IMPD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350.

Correction

In the issue of Friday, November 15, 1996, on page 58489, in the first column, amendatory instruction 5 is corrected to read as follows: ''Section 225.7005 is added to read as follows:''.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97–21890 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 97–047, Notice 01]

RIN 2127–AG44

Anthropomorphic Test Dummy; Six-Year-Old Child Dummy

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

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects NHTSA's regulation specifying the characteristics of the test dummy representing a six-year-old child. It revises the specification for locating the center of gravity (cg) of the thorax by moving it forward 0.4 inches from the location currently specified in part 572. This document also amends the dummy's specifications to show that thorax ballast mass, if used, is mounted on the inside of the anterior wall of the spine box rather than to its sides. Both of these changes bring the drawing specifications in line with the actual construction of the dummy. They are intended to ensure that there is no confusion among dummy manufacturers and users as to whether a particular dummy meets the specifications of NHTSA's regulation.

DATES: The changes made in this rule are effective August 20, 1997. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of August 20, 1997.

FOR FURTHER INFORMATION CONTACT: *For nonlegal issues:* Stan Backaitis, Office of Crashworthiness Standards (*telephone:* 202–366–4912). *For legal issues:* Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On November 14, 1991, NHTSA published a rule that added specifications for a 6-year-old child test dummy to NHTSA's set of regulations for ''Anthropomorphic Test Dummies'' (49 CFR part 572). The dummy was adopted to test child restraint systems for older children. The specifications for the dummy are set forth in subpart I of 49 CFR part 572.

The dummy is instrumented with accelerometers for measuring accelerations in the thorax during dynamic testing. NHTSA was very specific in describing, in drawings referenced in part 572, subpart I, the location of the center of gravity (cg) of the dummy's thorax. However, location descriptions for the cg in the specifications do not reflect where the cg is actually located in the dummy.

This discrepancy was brought to the agency's attention by First Technology Safety Systems, Inc. (FTSS), a manufacturer of test dummies. On January 23, 1996, FTSS petitioned the agency to move the shown location of the cg of the thorax of the dummy forward 0.4 inches from the current location specified in drawings that are incorporated into part 572. Currently, these drawings specify that the cg is 0.9 ± 0.5 inches back from the dummy's shoulder yoke center. The petitioner requested that the cg be located 0.5 ± .5 inches back from the shoulder yoke, ''to fit within the design proportions and put the cg in line with its current production value.''

NHTSA has examined FTSS's concerns and agrees that the specification for the cg of the dummy's thorax should be amended. Accordingly, this document corrects the specification for locating the cg of the thorax by moving the specified location forward 0.4 inches.

The discrepancy in the current specification usually results when ballast is used in the dummy's thorax to achieve the required thorax weight.[1] NHTSA had found that in some tests of the dummy, the screws that affix the ballast firmly to the lateral sides of the thoracic spine box loosen during dynamic testing. This causes the ballast to vibrate, resulting in extraneous accelerometer responses. To prevent the ballast retaining screws from loosening, NHTSA moved the ballast forward from the lateral sides of the thoracic spine box to the inside anterior wall of the box, where the ballast could not load the screws with high dynamic forces. FTSS estimates that the repositioned ballast could result in the accumulation of the various weight tolerances within the thorax such that it could put the cg location up to 0.6 inches forward from its current specification. However, FTSS believes that relocating the cg 0.4 inches forward from the current position would be a more representative mean location for all of the dummy population.

NHTSA has decided to revise Subpart I as requested by FTSS to avoid potential sources of complaint and confusion caused by a discrepancy in the cg location of the dummy's thorax. Dummy manufacturers have asked NHTSA on different occasions to correct inconsistencies between the part 572 specifications and the actual design and manufacture of the test dummies, to avoid potential customer complaints that a particular dummy does not meet the specifications of NHTSA's regulation, even when the problems are relatively minor and are related to the specification rather than the dummy. Such conforming amendments to part 572 have been made several times, e.g., corrections of NHTSA's regulations for the side impact test dummy, 59 FR 52089; October 14, 1994; and six-year-old dummy, 60 FR 2896, January 12, 1995.) These amendments are primarily corrective in nature, and do not affect the impact response of the dummy in any significant manner.

Today's correction does not impose any additional responsibilities on any manufacturer and has virtually no effect on the performance of the dummy. To determine the importance and the effects of thorax cg location on the dummy's kinematics, a modeling study was performed for NHTSA by the National Crash Analysis Center of the George Washington University. The study used an Articulated Total Body computer model to represent the six-year-old child dummy restrained by a three-point belt system and seated on a belt-positioning booster seat. The location of the thorax cg varied over a range of one inch up, down, forward and backward. The study showed that a movement of the cg one inch forward did not change the chest g response, reduced head g response by 1 g and

[1] The amount of ballast in the thorax depends on how weight tolerances of the various parts that make up the thorax assembly accumulate.

increased head excursion by 0.5 inches. Assuming a linear relationship between changes in the cg location and the dummy's responses, moving the cg of the thorax 0.4 inch forward would amount to no change in chest g, about 0.4g decrease in the head and 0.2 inch increase in head displacement. These changes translate to 0 percent change in the torso response, approximately 0.8 percent decrease in the head injury criterion and only slightly over 3 percent increase in head displacement.

It should be noted that these estimates represent theoretical potential response changes. Actually, there would be no change in the performance of existing dummies, because existing dummies would not be changed. This revision brings in line the part 572 specification to the dummy as actually produced.

This document also corrects Drawing No. SA 106C 001 to show that the thorax ballast, if used, would be mounted inside the thoracic spine box, rather than outside as is currently shown. As explained above, in actual practice, the ballast (if needed) is mounted inside rather than outside of the spine box on all currently manufactured six-year-old child dummies. Accordingly, this change would bring in line the subject drawing to current dummy construction practice.

The following table identifies the drawings that are revised by this document, and shows the new revision letters for the drawings:

AFFECTED DRAWINGS

Drawing name	Drawing No.	Previous revision letter	New revision letter
Crash Test Dummy Assembly; 6-Year-Old Child	SA 106C 001 (sheet 1)	D	E
Crash Test Dummy Assembly; 6-Year-Old Child	SA 106C 001 (sheet 3)		A
Crash Test Dummy Assembly; 6-Year-Old Child	SA 106C 001 (sheet 10)	B	C
Crash Test Dummy Assembly; 6-Year-Old Child	SA 106C 001 (sheet 11)	C	D
Sternum Thoracic Weld Assembly	6C 1000–1	B	C
Ballast	6C 1021	A	B
Cover-Chest Accelerometer	6C 909		A
Screw Button Head Socket	6C 1610–1		A
Bushing	6C 1023	Deleted.	

This document also updates the reference in § 572.70 to the address and telephone number of Reprographic Technologies, concerning where the drawings for the dummy may be obtained.

This document does not impose any additional responsibilities on any vehicle or dummy manufacturer. Since this rule does not impose any additional burdens, and because it corrects minor inconsistencies in the regulation and removes potential sources of question for dummy manufacturers, NHTSA finds for good cause that notice and an opportunity for comment on this document are unnecessary, and that this rule should be effective upon publication.

These minor technical amendments were not reviewed under E.O. 12866. NHTSA has considered costs and other factors associated with these amendments, and determined that these amendments do not change any of the conclusions in the November 1991 final rule regarding the impacts of that final rule, including the impacts on small businesses, manufacturers and other entities.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

PART 572—[AMENDED]

1. The authority citation for part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Subpart I—6-Year-Old Child

2. In § 572.70, paragraph (b)(1) is revised to read as follows:

§ 572.70 Incorporation by reference.

* * * * *

(b) * * *

(1) Drawing number SA 106 C001 sheets 1 through 18, and the drawings listed in the parts lists described on sheets 8 through 17, are available from Reprographic Technologies, 9000 Virginia Manor Rd., Beltsville, MD 20705, Telephone (301) 210–5600, Fax (301) 210–5607.

* * * * *

3. In § 572.71, paragraphs (a)(1), (b) and table A are revised to read as follows:

§ 572.71 General description.

(a) * * *

(1) Technical drawings, specifications, and the parts list package shown in SA 106C 001, sheets 1 through 18, rereleased July 11, 1997;

* * * * *

(b) The dummy is made up of the component assemblies set out in Table A:

TABLE A

Assembly drawing No.	Drawing title	Listed on drawing No.	Revision
SA 106C 010	Head Assembly	SA 106C 001, sheet 8	A
SA 106C 020	Neck Assembly	SA 106C 001, sheet 9	A
SA 106C 030	Thorax Assembly	SA 106C 001, sheet 10	C
SA 106C 030	Thorax Assembly	SA 106C 001, sheet 11	D
SA 106C 041	Arm Assembly (right)	SA 106C 001, sheet 14	A
SA 106C 042	Arm Assembly (left)	SA 106C 001, sheet 15	A
SA 106C 050	Lumbar Spine Assembly	SA 106C 001, sheet 12	A
SA 106C 060	Pelvis Assembly	SA 106C 001, sheet 13	A
SA 106C 071	Leg Assembly (right)	SA 106C 001, sheet 16	A
SA 106C 072	Leg Assembly (left)	SA 106C 001, sheet 17	A

* * * * *

4. In § 572.74, paragraph (a) is revised to read as follows:

§ 572.74 Thorax assembly and test procedure.

(a) *Thorax assembly.* The thorax consists of the part of the torso assembly designated as SA 106C 030 on drawing SA 106C 001, sheet 2, Revision A, and conforms to each applicable drawing on SA 106C 001 sheet 10, Revision C (including Drawing number 6C–1610–1 thru –4, Revision A, titled ''Screw Button Head Socket'', dated September 30, 1996, and Drawing number 6C–1021, Revision B, titled ''Ballast, 6 Yr. Thoraxc (for 7267A)'', dated September 24, 1996), and sheet 11, Revision D (including Drawing number SA 6C–909, Revision A, titled ''Cover-chest Accelerometer'', dated September 21, 1996, and Drawing number 6C–1000–1, Revision C, titled ''Sternum Thoracic Weld Ass'y.'', dated September 24, 1996).

* * * * *

5. In § 572.74, paragraph (d) is revised to read as follows:

§ 572.78 Performance test conditions.

* * * * *

(d) The dummy's dimensions are specified in drawings SA 106C 001, sheet 3, Revision A, July 11, 1997, and sheets 4 through 6.

* * * * *

Issued: August 12, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–21910 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD45

Endangered and Threatened Wildlife and Plants; Final Rule To Designate the Whooping Cranes of the Rocky Mountains as Experimental Nonessential and To Remove Whooping Crane Critical Habitat Designations From Four Locations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: On July 21, 1997, the U.S. Fish and Wildlife Service (Service) published a final rule designating the Rocky Mountain population of whooping cranes (*Grus americana*) as experimental nonessential and removing whooping crane critical habitat designations from four National Wildlife Refuges; Bosque del Apache in New Mexico, Monte Vista and Alamosa in Colorado, and Grays Lake in Idaho. The rule inadvertently omitted language amending 50 CFR 17.95 to remove the designated critical habitat from the four National Wildlife Refuges. This proposed removal of critical habitat was included in the Service's proposed rule (61 FR 4394), which provided opportunity for public comment. Comments received on the proposed removal of designated critical habitat were summarized and discussed in the Service's final rule designating the Rocky Mountain population of whooping cranes as nonessential experimental. The Service herein amends 50 CFR 17.95 Typographical errors which occurred in the final rule in the entry under part 17.11(h) are also corrected here.

DATES: Effective August 20, 1997.

ADDRESSES: The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the southwest Regional Office, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico, 87103–1306.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Southwest Regional Office, Albuquerque, New Mexico (see **ADDRESSES** section) (telephone 505/248–6663; facsimile 505/248–6922).

Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. Section 17.11(h) is amended by revising the entries for ''Crane, whooping'' under BIRDS, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Birds							
*	*	*	*	*	*		*
Crane, whopping	*Grus americana*	Canada, U.S.A. (Rocky Mountains East to Carolinas), Mexico.	Entire, except where listed as an experimental population.	E	1, 3, 487, 621.	17.95(b)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (CO, FL, ID, NM, UT, WY).	XN	487, 621	NA	17.84(h)
*	*	*	*	*	*		*

2. Section 17.95(b) is amended by deleting the map showing whooping crane critical habitat throughout the United States and Canada, and by deleting the maps and descriptions of critical habitat for the whooping crane in the States of Colorado, Idaho, and New Mexico.

Dated: August 14, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22087 Filed 8–15–97; 3:33 p.m.]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Southwestern Willow Flycatcher; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: On July 22, 1997, the U.S. Fish and Wildlife Service (Service) designated critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*), a species federally listed as endangered under the authority of the Endangered Species Act of 1973, as amended (62 FR 39129). When proposed (58 FR 39495), the lateral extent of critical habitat for the southwestern willow flycatcher was defined as ''* * * within 100 meters of the edge of areas with surface water during the May to September breeding season and within 100 meters of areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation.'' In the final rule (62 FR 39129), the Fish and Wildlife Service mistakenly identified the lateral extent of each river mile designated to include areas within the 100-year floodplain. The Service herein revises the lateral extent of designated critical habitat to be within 100 meters of the edge of areas with surface water during the May to September breeding season and within 100 meters of areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. This includes areas with thickets of riparian trees and shrubs and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

The Service, given the time constraints of complying with a court order, decided to designate critical habitat as it was proposed in 1993. This decision was made, in part, because any changes that would result in significant additions to the proposed critical habitat might require a new proposal and comment period, and the Service had neither sufficient time nor resources available. The only changes from the proposed rule that the Service intended to make in the final rule were the deletion of some minor areas that were found to have been proposed in error. See 62 FR 39136. The change in the lateral extent of critical habitat between the proposed and final rules was inadvertent and inconsistent with the intent of the Service. Because of its efforts to comply with the court-imposed deadline, the Service did not become aware of this error prior to the publication of the final rule.

The Service finds that notice and public procedure on this correction are impracticable, unnecessary, and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). The public has already had the opportunity to comment on the substance of this correction, as it is the language of the original proposal. The final rule's deviation from the proposal in this regard was unintended by the Service. Because the rule which this rule corrects becomes effective on August 21, 1997, this correction must also become effective at that time in order to avoid unnecessary confusion.

EFFECTIVE DATE: August 21, 1997.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sam F. Spiller, Field Supervisor, Arizona Ecological Services Office, U.S. Fish and Wildlife Service, at the above address (Telephone 602/640–2720).

§ 17.95 [Corrected]

Accordingly, under the authority of 16 U.S.C. 1361–1407, 1531–1544, 4201–4245, Pub. L. 99–625, 100 Stat. 3500, throughout the preamble and the final rule for the southwestern willow flycatcher (*Empidonax traillii extimus*) published on July 22, 1997, the phrase ''within the 100 year floodplain'' is revised to read ''within 100 meters of the edge of areas with surface water during the May to September breeding season and within 100 meters of areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation.'' In addition, on page 39137, column 1, paragraph 4, the last sentence should be deleted and replaced with the following: ''However, the proposed rule established the lateral boundaries of critical habitat as within 100 meters of the edge of areas with surface water during the breeding season, and changing the lateral boundaries of critical habitat would result in significant additions to the areas proposed in 1993. Because there has been no proposed rulemaking for these additions, the Service determines that the lateral boundaries of critical habitat will remain, as proposed, within 100 meters of the edge of areas with surface water during the breeding season. The Service believes that these criteria provide reasonable critical habitat for the flycatcher, but recognizes that criteria that incorporate the dynamic nature of riparian habitat, such as the 100-year floodplain, may be appropriate and will take this into consideration should critical habitat for this species be revised.''

Dated: August 14, 1997.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22086 Filed 8–15–97; 3:33 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks which States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 1997–98 migratory bird hunting seasons. Early seasons are those which generally open prior to October 1. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: This rule takes effect on August 20, 1997.

ADDRESSES: States and Territories should send their season selections to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 12054) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for migratory bird hunting regulations frameworks and detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. In the same document, the Service described the proposed 1997–98 regulatory alternatives for duck hunting.

On June 27, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13 and June 6 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 23, 1997, the Service published in the **Federal Register** (62 FR 39712) a third document specifically dealing with proposed early-season frameworks for the 1997–98 season. That document also extended the public comment period to August 5, 1997, for early-season proposals. This rulemaking establishes final frameworks for early-season migratory bird hunting regulations for the 1997–98 season.

Review of Flyway Council Recommendations, Public Comments and the Service's Responses

The public comment period for early-season issues ended on August 5, 1997. The Service received recommendations from all four Flyway Councils. Early-season comments are summarized and discussed in the order used in the March 13 **Federal Register**. Only the numbered items pertaining to early seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1996–97 early-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1996–97.

General

Written Comments: The Humane Society of the United States (HSUS) recommended all seasons open at noon, mid-week, to reduce the large kills associated with the traditional Saturday openings. They also recommend that hunting during the one-half hour before sunrise be eliminated.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial early-season recommendations are included below.

G. Special Seasons/Species Management

iii. September Teal Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the continuance of the experimental September teal/wood duck seasons in Kentucky and Tennessee for the 1997–98 season with no change from the 1996–97 season frameworks.

The Central Flyway Council recommended a 3-year experimental teal harvest strategy in the Central Flyway based on the breeding population of blue-winged teal. When the 3-year running average breeding population of blue-winged teal is 4.7 million or greater, the Council's recommended harvest strategy would consist of two changes to the current September teal season frameworks. First, in those Central Flyway States currently allowed a September teal season, an additional 7 days of hunting (for a total of 16 days) and 1 additional teal (for a total of 5 teal) would be allowed. Second, for Central Flyway production States, the recommended harvest strategy would provide for a season of up to 7 days, beginning no earlier than September 20, and a daily bag limit of 4 ducks, 3 of which must be teal. The Council further recommended that the Service work with the States to cooperatively develop an experimental design and criteria to adequately evaluate the proposed expansion of teal harvest.

Written Comments: The Kansas Department of Wildlife and Parks (Kansas), Nebraska Game and Parks Commission (Nebraska), North Dakota Game and Fish Department (North Dakota), Oklahoma Department of Wildlife Conservation (Oklahoma), South Dakota Department of Game, Fish and Parks (South Dakota), and Texas Parks and Wildlife Department (Texas) supported the Central Flyway proposal for September teal seasons. Kansas and Texas commented that additional harvest provided by the proposed season expansion will not be excessive or negatively impact future teal populations. Kansas and Texas indicated that ongoing work associated with implementation of the Adaptive Harvest Management Program should not preclude completion of this management initiative. Kansas said they are willing to satisfy requirements associated with evaluation and monitoring associated with implementation of this proposed strategy. Kansas, Oklahoma and Texas indicated that this strategy will encourage the development and maintenance of wetland habitat and promote hunting by youth hunters. Nebraska pointed out that their duck breeding population was 17 percent

above the most recent 5-year average and would appreciate the additional opportunity that would be provided by the Central Flyway proposal. North Dakota, South Dakota, and Wyoming indicated that approval of the Central Flyway proposal would provide additional opportunity for northern States at a time when teal populations are at an all-time high. North Dakota commented that implementation of this proposal is currently appropriate because the Central Flyway preseason duck banding program will provide information for evaluations. North Dakota pointed out that their blue-winged teal population estimate for this year is 115 percent above the long-term average.

Several individuals recommended higher daily bag limits for teal given the current population level. Two individuals from Texas recommended a 5-teal daily bag limit while an individual from Missouri recommended a 6-teal limit. Another individual from Texas questioned why the Service was reluctant to increase the teal season length and bag limit. Nine individuals from Mississippi expressed preference for a 5-day teal and wood duck season rather than the present 9-day teal only season.

Service Response: It is important that any proposal for expanding the current teal season include a comprehensive evaluation plan and be coordinated within and among the Flyways. Identifying the full scope of any expansion is important, because it will dictate how extensive the evaluation plan must be.

The Central Flyway proposal does not include an evaluation plan. As previously stated, the evaluation plan must include study objectives, experimental design, decision criteria, and identification of data needs. The evaluation plan should address not only potential impacts to teal populations, but also impacts to nontarget species and the ability of hunters to comply with special-season regulations. Further, the September teal season bag limit should be limited to teal and not expanded to include other species, as was contained in the Central Flyway's proposal.

In an effort to further define what would comprise an acceptable evaluation plan, the Service suggests that any plan should consider the following: (1) description of the population dynamics of teal (e.g., how the populations respond to changes in the environment, harvest pressure, etc.), (2) current and predicted harvest pressure on teal, (3) the levels of regulations to be considered, (4) the harvest allocation among and within (i.e., production vs. nonproduction states) Flyways, (5) the acceptable attempt rate at nontarget species (i.e., the rate at which hunters attempt to shoot ducks other than teal), and (6) staff and financial resources to conduct the evaluation.

iv. September Duck Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Iowa be allowed to open the second segment of their split duck season no earlier than October 10, instead of October 15.

Service Response: Although this is primarily a late-season issue, the Service understands Iowa's concern for reaching a decision on the issue at this time. The Service concurs with this minor change in Iowa's framework.

vi. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended the continuance of the youth waterfowl hunt day and requested the Service announce their intent in June. The Council further recommended that ducks, coots, mergansers, moorhens, brant and snow geese be open to harvest on the special day and requested clarification of whether youth may participate in other open migratory bird hunting seasons on that day.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that youth waterfowl hunt day bag limits be the same as the regular-season bag limits and include ducks, geese, and coots, with framework dates 14 days outside the regular duck-season framework dates instead of 10.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the inclusion of geese and coots in a 2-day youth waterfowl hunting season, with framework dates 14 days outside of the regular duck-season framework dates instead of 10.

The Pacific Flyway Council recommended continuation of the youth hunt that allows States to select outside the general season and frameworks.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, encouraged the Service to make an early announcement regarding the Youth Waterfowl Hunt Day and asked to include Atlantic brant, snow geese, and moorhens along with ducks as legal game.

Written Comments: The New Jersey Division of Fish, Game and Wildlife encouraged the Service to make an early announcement of their intention to hold another youth hunting day. They also recommended that ducks, moorhens, brant and snow geese be open to harvest on the special day.

An individual from Wisconsin supported the establishment of a special youth hunt for the 1997–98 hunting season. Another commenter from Nebraska thanked the Service for the establishment of the youth hunt last year.

Service Response: The Service appreciates the recommendations from the Flyway Councils regarding the continuation of a youth waterfowl hunting day for this hunting season. While the Service recognizes that there will be those organizations and individuals opposed to the establishment of this day on the basis of general opposition to hunting as a desirable outdoor recreational activity, the Service reiterates its belief that recreational sport hunting is a proper and compatible use of a renewable natural resource. The Service is further directed by various legislation to regulate the hunting of migratory waterfowl and views its role as one of permitting recreational harvest opportunities consistent with long-term resource conservation for all Americans. As part of this objective, the Service believes a well-educated and properly trained hunting constituency is in the best interest of the resource and views a youth hunting day as an educational opportunity to help ensure safe, high-quality hunting for future generations of Americans. The Service believes that the special 1-day hunt is consistent with its responsibility to provide general education and training in the wise recreational uses of our nation's valuable wildlife resources and provides the best and safest learning environment for our youth who are interested in hunting.

Regarding the Councils' recommendation on the framework dates, the Service agrees that the period 14 days prior to and after the outside framework dates for the regular duck season provides sufficient flexibility for States to provide this opportunity to their constituents.

The Service recognizes the potential opportunity that inclusion of geese in the youth waterfowl hunt might provide. However, due to season closures and restrictions in place to protect certain populations of Canada geese in various parts of the country, the Service believes this complication is not appropriate at this point but is certainly a matter for consideration in future regulatory cycles. Further, these guidelines do not preclude the inclusion of geese in the daily bag if the goose

season is open at the time of the special youth hunt. Therefore, the Service believes this opportunity should be offered during the 1997–98 hunting season and will utilize the following guidelines:

(1) States may select 1 day per duck-hunting zone, designated as ''Youth Waterfowl Hunting Day'', in addition to their regular duck seasons.

(2) The day must be held outside any regular duck season on either a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate.

(3) The day could be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season.

(4) The daily bag limit may include ducks, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species restrictions would remain in effect.

(5) Youth hunters must be 15 years of age or younger.

(6) An adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

3. Sea Ducks

Written Comments: The HSUS recommended the sea duck season either be closed or severely restricted until more complete information on biology and population status is available.

Service Response: The Service continues to be concerned about the status of sea ducks and the potential impact that increased hunting activity could have on these species. While there are ongoing cooperative efforts to summarize additional information on sea ducks, the Service continues to emphasize the importance of completing the sea duck management plan. The Service also believes that improvements in survey capabilities for these species are extremely important for future management actions. The Service will continue to closely monitor these species.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended a 3-year experimental September Canada goose season in New Jersey with a framework closing date of the first Saturday in October. The Council also recommended an experimental framework closing date of October 5 for the Long Island, New York, 1997 September Canada Goose Season.

The Pacific Flyway Council recommended several modifications to the existing special September goose seasons. The Council recommended expansion of the Washington September Canada goose hunt zone to include all of Washington for 7 consecutive days. In California, the Council recommended the establishment of a new 9-day season, with a 2-bird daily bag and possession limit, in Humboldt County, California. Harvest of up to 200 birds would be controlled through a regulated permit system. In Oregon, the Council recommended that the framework in Clatsop, Columbia, Multnomah, Washington, Clackamas, Marion, Yamhill, Polk, Linn, Benton, Lane, Lincoln, and Tillamook Counties be 14 consecutive days between September 1 and 20 with a daily bag and possession limit of 5 and 10 birds, respectively.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, reiterated support for New Jersey's request for extension of the special September Canada goose season to the first Saturday in October and New York's request to extend to October 5 and cited that all criteria have been met. These additional days would increase the harvests of resident geese and help to reduce complaints.

Written Comments: The Maryland Department of Natural Resources opposed the extension of the framework closing date in New Jersey's September Canada goose season. They believed that there will be an insufficient number of migrant neck-banded geese in the migrant population to evaluate the impacts of this proposed change. They further believed that due to potential differences in vulnerability to harvest between resident and migrant geese, the addition of hunting days in early October could lead to even higher than expected migrant goose harvest.

The New Jersey Division of Fish, Game and Wildlife supported the modification of the framework closing date in New Jersey to the first Saturday in October. They estimated that the additional days would allow hunters to harvest an additional average of 1,600 resident Canada geese which would help slow population growth and reduce the number and severity of nuisance goose complaints. In response to Maryland's comments, they pointed out several other techniques for assessing migrant harvest during special seasons, such as the continuing telemetry studies and the initiation of Atlantic Population (AP) preseason breeding ground banding in 1997. New Jersey contends that use of these data sets will greatly enhance the understanding of arrival dates of AP geese and will replace the dependence on the disappearing migrant neck bands. New Jersey further pointed out that their proposal meets the criteria established by the Atlantic Flyway Council and the Service for special Canada goose seasons targeting resident Canada geese.

Service Response: At the request of the Atlantic Flyway Council, the Service temporarily extended framework closing dates in the Atlantic Flyway on resident geese in 1996 to September 25, without evaluation in most areas, and on an experimental basis to September 30 in New Jersey and North Carolina. Presently, New Jersey has completed only one year of its agreed upon 3-year evaluation.

Although extending the framework closing dates into early October in New Jersey and New York would increase harvests of resident geese and help to alleviate injurious problems, the Service believes that further evaluation is needed before all parties are comfortable that the harvest of migrant geese will not exceed 10 percent of the special season harvest. Also, the Service is concerned that sample sizes of neck-banded migrant geese are no longer sufficient to estimate the percentage of migrant geese in the early seasons with any degree of reliability. Both New Jersey's and New York's proposals indicate that the harvests of migrant geese increases rather dramatically after October 1 and there is little capability to measure precisely the percentage of migrant harvest. Thus, the Service does not support New Jersey's request until it completes its 3-year evaluation. However, based on the observations presented, the Service would support New York extending its season on Long Island from September 25 until September 30 on a 3-year experimental basis.

With respect to the Pacific Flyway Council's recommendations, the Service supports the change to a 7-day Statewide season in Washington and the new season proposal for California, as both of these recommendations conform to the existing Service criteria for special Canada goose seasons. The Service also endorses the proposal for a 14-day experimental season in Oregon between September 1 and 20. The Service notes that a 3-year evaluation of that portion of the season occurring after September 15 is required. The Service is particularly concerned about possible impacts on dusky Canada geese. The Service specifically requires monitoring be conducted for the presence of neck-banded dusky Canada geese throughout the hunt area during this period as a part of the experimental evaluation. Additionally, the Service requires Oregon to submit an annual report of

their evaluation by July 15 each year describing the results of this monitoring program. These results will be reviewed prior to continuation of the experiment during the 3-year experimental period and modifications of the area open to hunting during this period will be required if dusky Canada geese are found to be present during the season.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended Michigan and Wisconsin be allowed to open their regular Canada goose season as early as September 27, 1997, in Michigan's Upper Peninsula and September 20, 1997, in Wisconsin.

Service Response: The Service concurs.

9. Sandhill Cranes

Council Recommendations: The Central Flyway and Pacific Flyway Councils recommended that in Montana, sandhill cranes in Wheatland County and that portion of Sweet Grass County north of I-90 be delineated as Rocky Mountain Population sandhill cranes. Thus, management of these cranes, including harvest, would be guided by the Rocky Mountain Population Sandhill Crane Management Plan, rather than the Mid-Continent Population Sandhill Crane Management Plan.

Service Response: The Service agrees with this minor change.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended framework dates of October 6 to January 31, a 30-day season and 3-bird daily bag limit and urged the Service to make assessment of the relative effects of harvest and habitat on woodcock populations a high priority.

The Mississippi Flyway Council recommended an interim woodcock harvest strategy for the Central region until such time as Regional Woodcock Management Plans and a long-term harvest strategy are completed. The interim harvest strategy would consist of the following:

The following harvest restrictions would be implemented when the cumulative change since 1968 in the number of woodcock heard in the Singing-ground Survey exceeds 51 percent for the Central Management Region:

(1) Season framework dates would be the Saturday nearest September 22 through January.

(2) The daily bag limit would be reduced from 5 to 3 birds.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, expressed reluctant support for the recommendation for more restrictive framework dates and season lengths for woodcock. However, he indicated that given the proposed September 20 opening framework in the Mississippi and Central Flyway States, perhaps October 1, rather than October 6, would be a more appropriate opening date for the Atlantic Flyway. He encouraged the Service to assess the relative roles of harvest and habitat changes in woodcock population declines.

Mr. Charles D. Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, acknowledged the problem with declining woodcock populations and encouraged the Service to work with the States to address the problem of diminishing woodcock habitat.

Mr. William H. Goudy, representing the Ruffed Grouse Society, expressed concern about the lost recreational opportunity that will result from reduced season lengths and bag limits, particularly in the Mississippi Flyway. Although the change in bag limits would be acceptable, he regretted the loss in days. He indicated that the population data on which the Service bases its decisions is flawed and subject to criticism and that there is no information on what effects the changes in regulations will have. He expressed support for the expanded use of zones for woodcock hunting.

Written Comments: The New Jersey Division of Fish, Game, and Wildlife supported the Atlantic Flyway Council's recommended framework dates of October 6 to January 31, a 30-day season and 3-bird daily bag limit. Although they believed that the population declines were the result of habitat changes and harvest played little or no role in the declines, they realized that the data bases regarding woodcock populations are not adequate to assess the role of harvest in woodcock population dynamics. They further urged the Service to make assessment of the relative effects of harvest and habitat on woodcock populations a high priority.

The Ohio Division of Wildlife (Ohio) believed that the population declines were habitat related. Based on this belief, Ohio recommended the Service adopt the Mississippi Flyway Council's recommendation regarding woodcock harvest regulations. They did not support changing harvest regulations when evidence of hunting as the cause of the decline is not conclusive and believed that these actions could significantly affect recreational opportunity.

The Louisiana Department of Wildlife and Fisheries (Louisiana) and the Tennessee Wildlife Resources Agency (Tennessee) expressed disappointment in the Service's proposed woodcock frameworks and the failure to adopt the Mississippi Flyway Council's recommendation. Louisiana encouraged the Service to reconsider its proposed actions and urged the Service to attack the real problem affecting woodcock populations' habitat. Tennessee further requested the Service provide the States the option to have two zones with no more than a 5- and 10-day penalty for a 45- and 65-day framework, respectively.

The Louisiana Wildlife Federation (LWF) urged the Service to reconsider and allow for a 65-day season and a 5-bird daily bag limit in the Central Region. The LWF was concerned that the proposed reductions would reduce participation and needed support for woodcock conservation.

The Wildlife Management Institute (WMI) did not agree with the Service's proposal to reduce woodcock seasons and bag limits. WMI believed this action would have major negative effects on hunters, public perceptions of hunters, and State/Federal relations and would not have a significant effect on woodcock population trends. WMI suggested the Service could better respond to woodcock declines by emphasizing management programs that create early successional forest habitats.

The Service also received many comments from individuals with many noting the importance of habitat management. Several individuals from Michigan, Ohio, Maine, and North Carolina supported more restrictive woodcock hunting regulations indicating that restrictions were overdue. Four individuals from Wisconsin and one from Michigan supported reducing the bag limit from 5 to 3 birds but expressed concerns about other possible regulatory changes. They indicated a shorter season would be acceptable but felt that the framework opening date should remain September 15, noting that hunting opportunity in northern areas would be affected disproportionately by a later framework opening date. Another individual from Wisconsin felt that changes in regulations should only be made when it is certain that they will help the population. He indicated the season should begin before October 1 and that it should not be shorter than 45 days. An individual from Michigan indicated that based on his personal observations, woodcock populations have not

declined. He felt that an opening date later than September 15 would take away the best time to hunt and suggested different opening and closing dates based on latitude. Another individual from Michigan implied that regulations should not be changed unless hunting mortality is causing the population declines. An individual from Kentucky thought that reducing the woodcock harvest would help a little but would not solve the overall problem. An individual from Tennessee supported the Service's proposed changes except for reductions in season length. An individual from New Hampshire suggested a special 20-day blackpowder season.

Individuals from Louisiana (18), Pennsylvania, Michigan, Maryland, and Vermont opposed any changes in regulations, generally citing habitat changes and/or weather as the causes of the woodcock population decline. Many of these individuals were concerned that more restrictive regulations would reduce the number of woodcock hunters and thus, support for woodcock conservation. Four of these individuals indicated that the Service should improve its ability to monitor woodcock populations before restricting hunting regulations while another believed that the Service's delay in implementing the American Woodcock Management Plan was inexcusable and negligent. Another individual from Louisiana was not opposed to restrictions provided that accurate data indicate that hunting pressure is the major cause of the population declines. Three individuals from Texas opposed more restrictive hunting regulations based on the presumption that the Singing-Ground Survey is statistically flawed and potentially biased.

The HSUS commended the Service for its proposal to reduce woodcock hunting seasons given the long-term population declines that have occurred throughout its range.

Service Response: Woodcock populations have declined significantly since the 1960s, and in recent years reproductive success has been poor. The Service is very concerned about the ongoing declines in woodcock populations. Although hunting mortality is not believed to be the major force driving the declines, the Service believes some restrictions to woodcock harvest opportunity are appropriate given the current status and trends of woodcock populations and the limited information on the role of hunting mortality and other factors in woodcock population dynamics. While habitat changes appear to be the primary cause of the woodcock population declines, other factors, including hunting mortality, may be contributing to the declines, and the importance of these factors may increase as populations, reproductive success, and the habitat base decline. Thus, the Service believes that hunting regulations should be commensurate with woodcock population status and rates of decline. A combination of changes in framework dates, bag limits, and season length are necessary in order to achieve a significant reduction in harvest that is shared throughout the range of the woodcock.

Therefore, in response to continuing long-term declines in the woodcock population, the Service is implementing several framework changes. In the Eastern Region, the Service concurs with the recommendation from the Atlantic Flyway Council for framework dates of October 6 through January 31, season length of 30 days, and a daily bag limit of 3 birds. New Jersey may continue to select 2 zones with a reduced season length of 24 days in each zone. In the Central Region, the Service will utilize framework dates of the Saturday nearest September 22 (September 20 this year) through January 31, a reduced season length of 45 days (from 65 days), and a bag-limit reduction from 5 to 3 birds. The Service believes that these restrictions represent a compromise to achieve a reduction in harvest while still allowing reasonable recreational opportunity.

The Service also acknowledges that existing woodcock surveys are somewhat limited compared to surveys for some other migratory bird species, and believes this is one of the reasons a cautious approach to harvest management is appropriate. Although the Service always seeks to improve its monitoring programs whenever practical, woodcock populations are inherently difficult to monitor because of the bird's inconspicuous nature and preference for areas with dense vegetation. Although some aspects of the Singing-ground Survey may warrant scrutiny and/or improvement, the current survey provides the only index to changes in abundance of breeding populations of woodcock and the results are used with confidence to guide the decision-making process. Improved information on total woodcock harvest and hunter success will be available when the Harvest Information Program, currently being implemented by the Service and State wildlife agencies, is fully implemented. Unfortunately, this information is not likely to clarify the relationship between hunting mortality and population status.

The Service notes that a 30-day season with an October 1 framework opening date would result in little or no reduction in harvest in the northern states in the Atlantic Flyway, where much of the harvest in the Flyway occurs. Thus, the Service concurs with the original October 6 recommendation by the Atlantic Flyway Council, which was not predicated on the establishment of specific regulations in the Mississippi and Central flyways.

The Service believes zoning has the potential to increase the harvest of woodcock, and therefore does not support the expanded use of zoning at a time when more restrictive woodcock hunting regulations are being established to bring harvest opportunities to a level more commensurate with current woodcock population status.

The Service seeks active participation by the Flyway Councils to address the major factors behind long-term population declines, and to develop a long-term harvest strategy for woodcock.

17. White-winged and White-tipped Doves

Council Recommendations: The Central Flyway Council recommended removing the restriction of no more than 6 white-winged doves in the aggregate daily bag limit during the regular mourning dove season in Texas.

Service Response: The Service supports removing the restriction on the number of white-winged doves allowed within the aggregate daily bag limit during the regular dove season in Texas. The distribution and density of white-winged doves have expanded northward in Texas. Populations have doubled since 1989, with an estimated 702,000 whitewings nesting in a 17-county area north of the Lower Rio Grande Valley (LRGV), which historically was the only area occupied by the birds. No increase in harvest is expected for whitewings in the LRGV. In the remainder of the State, a harvest increase of 15 percent is projected.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended an experimental tundra swan season in the Kotzebue Sound region of Alaska's Game Management Unit (GMU 23), which would be consistent with the Pacific Flyway Management Plan's harvest and permit guidelines for the Western Population of [Tundra] swans, and current guidelines for conducting experimental seasons (3-year evaluation). The recommended season framework would be September 1 - October 31 with a 3-swan per season

limit (by sequential permit) and a maximum of 300 permits in the GMU.

The Pacific Flyway Council recommended an increase in Alaska's dark goose daily bag and possession limits from 4 and 8 to 6 and 12, respectively in GMU 9(D) and the Unimak Island portion of Unit 10.

The Pacific Flyway Council recommended an increase in Alaska's falconry bag limits to 6 daily and 12 in possession for migratory birds in the aggregate. Restrictive species limits would not be applied.

Written Comments: The HSUS recommended that the opening date for all seasons in Alaska be delayed by 2 weeks so that young birds are able to leave natal marshes before being subjected to hunting pressure.

Service Response: The Service concurs with the proposal to offer an experimental tundra swan season in GMU 23 consistent with the Flyway Management Plan and hunt guidelines in the Hunt Plan for the Western Population of Tundra Swans. The Service also supports the change in the dark goose bag and possession limits in Unit 9(D) and the Unimak Island portion of Unit 10. The Service finds no compelling rationale for the request to alter the falconry bag and possession limits in Alaska and will maintain the existing national falconry bag and possession limits in all States.

Regarding the opening date for seasons in Alaska, the Service reiterates previous responses that hunting pressure on migratory birds is comparatively light. Many northern species migrate from the State before seasons open there in September and there is no evidence to indicate regulated hunting has adversely impacted local populations.

23. Other

A. Compensatory Days

Council Recommendations: The Atlantic Flyway Council requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. The Council's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia. The Council believes that granting this request at this time will allow integration of these changes into AHM evaluations of harvest rates in the Flyway and selection of appropriate regulatory alternatives.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, offered to modify the Flyway's original request for compensatory days to states closed to Sunday hunting by restricting it to only those states with existing statewide prohibitions in place prior to its implementation. This action prevents any states from enacting new laws to close Sunday hunting in order to be eligible for compensatory days.

Written Comments: The South Carolina Department of Natural Resources asserted that Sunday closures of waterfowl hunting are State issues and should not be addressed by the Service. South Carolina further asserted that if the Service grants compensatory days to States that are currently closed on Sundays by State law, then compensatory days should also be granted to States that enact Sunday closures in the future.

The Georgia Department of Natural Resources objected to the Service offering compensatory days to States in the Atlantic Flyway with Sunday closures. They believed that this was a State issue and, as such, the Federal government should not be involved. They further believed that each State should change any applicable self-imposed restrictions relating to Sunday hunting closures and that involving Federal procedures to circumvent State laws sets a bad precedent that could open the door for further involvement in future unresolved issues.

The Delaware Division of Fish and Wildlife recommended the Service grant compensatory days in lieu of Sunday hunting on a 1 for 1 basis to restricted States with no penalty to unrestricted States.

The Maryland Department of Natural Resources (Maryland) requested that the Service grant compensatory days to the 10 Atlantic Flyway States that are closed to waterfowl hunting on Sunday by State law. They believe that compensatory days would enable these States to equally share in the recreational benefits derived from the Flyway's waterfowl resource. Maryland supported the Federal closure of Sunday for the taking of wild waterfowl if the Service deemed this approach necessary to provide compensatory days. However, Maryland requested the Service give consideration to the current Sunday hunting exception Maryland grants falconers.

The New Jersey Division of Fish, Game and Wildlife (New Jersey) requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. New Jersey's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia.

Several individuals from Maryland questioned the need to close Sundays to the take of all migratory waterfowl, including falconry, in order to provide compensatory hunting days to those States prohibiting Sunday hunting.

Service Response: In 1995, the Service committed to working with the Atlantic Flyway Council to review and better clarify the issue of compensatory days for those States prohibiting Sunday hunting in an attempt to resolve this long-standing issue. In the past, the Service has maintained the policy that this problem is an individual State issue, to be resolved by each State removing their self-imposed restrictions. However, recognizing the difficulties involved with changing State law, the Service is sympathetic to the loss of hunting opportunity that results from the existing prohibitions on Sunday hunting. A recent Service assessment suggests that compensatory days for Sunday closures will result in a slight increase in the harvest rates of mallards breeding in eastern Canada and the northeastern U.S., which would be accompanied by a small decrease in average breeding population size. A similar effect is expected on other species. Thus, after examining the various technical and policy concerns, the Service believes that any additional harvest impacts can be adjusted by changing regulatory frameworks where needed and that various administrative and procedural concerns can be managed. Therefore, during the 1997–98 hunting season, the Service will offer compensatory days to States in accordance to the following guidelines:

(1) Only States in the Atlantic Flyway that prohibit Sunday hunting *Statewide* by State law prior to 1997 are eligible (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia).

(2) All Sundays will be closed to all take (including extended falconry) of migratory waterfowl (including mergansers and coots) by Federal rulemaking. Other migratory game species are not eligible for compensatory days.

(3) Season days must run consecutively within prescribed framework dates and season length, excluding the Sunday closure, and conform to existing split-season criteria. Total season days (including extended falconry) must not exceed 107 days.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may cause modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Regulatory Flexibility Act

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the MBMO.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). The Service uses the various information collection requirements contained in this rule to develop future migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015. This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. OMB approval for the Sandhill Crane Harvest Questionnaire, 1018–0023, has expired and has been submitted to OMB for reinstatement. The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion its constitutes of the total population. The Service will not collect this information until OMB approval has been obtained and a **Federal Register** notice published. Additionally, no person may be required to respond to a collection of information unless it displays a currently valid OMB number.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1997–98 season.

The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The priamry author of this rule is Ronald W. Kokel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1997–98 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

Dated: August 8, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1997–98 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of Interior approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1997, and March 10, 1998.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: One-half hour before sunrise to sunset, except in Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 20). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Day

Outside Dates: States may select 1 day per duck-hunting zone, designated as ''Youth Waterfowl Hunting Day'', in addition to their regular duck seasons. The day must be held outside any regular duck season on either a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The day could be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season.

Daily Bag Limits: The daily bag limit may include ducks, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and must be included in the regular duck season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York; the Lake Champlain Region of New York and Vermont; the Counties of Caroline, Cecil, Dorchester, and Talbot in Maryland; Delaware; and Crawford County in Pennsylvania. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 30 days during September 1–30 may be selected by New Jersey, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected in Crawford County, Pennsylvania. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1-15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in the Michigan Counties of Huron, Saginaw and Tuscola, where no special season may be held. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 2, with season and possession limits of 4 will apply to the special season.

Oregon may select an experimental special Canada goose season of up to 15 days during the period September 1–20. Daily bag limits may not exceed 5 Canada geese. At a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 3 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 20 in Wisconsin and September 27 in the Upper Peninsula of Michigan. Season lengths and bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. Seasons in the Park-Big Horn Unit in Wyoming and Idaho are experimental.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 18) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails - In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails - In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 6 and January 31. States in the Central and Mississippi Flyways may select hunting seasons

between the Saturday nearest September 22 (September 20) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Atlantic Flyway and 45 days in the Central and Mississippi Flyways. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington - Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California - Not more than 60 days which may be split between two periods, September 1-15 and November 1-January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks - Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Light Geese - A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese - A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 9(e) and 18, the limits for Canada geese are 1 daily and 2 in possession.
2. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. Middleton Island is closed to the taking of Canada geese.
3. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.
4. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant - A daily bag limit of 2.

Common snipe - A daily bag limit of 8.

Sandhill cranes - A daily bag limit of 3.

Tundra Swans - Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.
2. All season Framework dates are September 1 - October 31.
3. In GMU 18, no more than 500 permits may be issued during the operational season. No more than 3 tundra swans permits may be issued per hunter and permits must be issued sequentially one at a time, upon filing a harvest report.
4. In GMU 22, no more than 300 permits may be issued during the operational season authorizing each permittee to take 1 tundra swan per season.
5. In GMU 23, no more than 300 permits may be issued during the experimental season. No more than 3 tundra swans permits may be issued per hunter and permits must be issued sequentially, one at a time, upon filing a harvest report. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks - Not to exceed 6.

Common moorhens - Not to exceed 6.

Common snipe - Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide and excluding the Great Divide Portion.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone - Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone - Remainder of the State.

California

White-winged Dove Open Areas - Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone - The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone - Remainder of State.

Georgia

Northern Zone - That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of the Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence west along the southern border of Candler County to the Ohoopee River; thence north along the western border of Candler County to Bulloch County; thence north along the western border of Bulloch County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone - Remainder of the State.

Louisiana

North Zone - That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone - The remainder of the State.

Mississippi

South Zone - The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone - The remainder of the State.

Nevada

White-winged Dove Open Areas - Clark and Nye Counties.

Texas

North Zone - That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I-10 at Fort Hancock; east along I-10 to I-20; northeast along I-20 to I-30 at Fort Worth; northeast along I-30 to the Texas-Arkansas State line.

South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I-10 to Orange, Texas.

Special White-winged Dove Area in the South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions - Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone - That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone - Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone - The remainder of the State.

New Mexico

North Zone - North of a line following U.S. 60 from the Arizona State line east to I-25 at Socorro and then south along I-25 from Socorro to the Texas State line.

South Zone - Remainder of the State.

Washington

Western Washington - The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone - That portion of the State north of NJ 70.

South Zone - The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

Connecticut

North Zone - That portion of the State north of I-95.

Maryland

Eastern Unit - Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince Georges Counties east of I-95.

Western Unit - Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince Georges Counties east of I-95.

Massachusetts

Western Zone - That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone - That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone - That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Early-season Hunt Unit - Cheshire, Hillsborough, Rockingham, and Strafford Counties.

New York

Lake Champlain Zone - The U.S. portion of Lake Champlain and that area

east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone - That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone - That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone - Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone - That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone - The remaining portion of New York.

North Carolina

Northeast Hunt Unit - Counties of Bertie, Camden, Chovan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit - Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S-8-31 and west of the Santee Dam.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone - Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Minnesota

Twin Cities Metropolitan Canada Goose Zone -

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities or Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the state.

Northwest Goose Zone (included for reference only, not a special September Goose Season Zone) - That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Five Goose Zone - That portion of the state encompassed by a line extending north from the Iowa border along U.S. Interstate Highway 35 to the south boundary of the Twin Cities Metropolitan Canada Goose Zone, then west and north along the boundary of the Twin Cities Metropolitan Canada Goose Zone to U.S. Interstate 94, then west and north on U.S. Interstate 94 to the North Dakota border.

Two Goose Zone - That portion of the state to the north of a line extending east from the North Dakota border along U.S. Interstate 94 to the boundary of the Twin Cities Metropolitan Canada Goose Zone, then north and east along the Twin Cities Metropolitan Canada Goose Zone boundary to the Wisconsin border, except the Northwest Goose Zone and that portion of the State encompassed by a line extending north from the Iowa border along U.S. Interstate 35 to the south boundary of the Twin Cities Metropolitan Canada Goose Zone, then east on the Twin Cites Metropolitan Canada Goose Zone boundary to the Wisconsin border.

Tennessee

Middle Tennessee Zone - Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee,

Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

Cumberland Plateau Zone - Bledsoe, Bradley, Clay, Cumberland, Dekalb, Fentress, Grundy, Hamilton, Jackson, Marion, McMinn, Meigs, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Van Buren, Warren, and White Counties.

East Tennessee Zone - Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Monroe, Sevier, Sullivan, Unicoi, Union, and Washington Counties.

Wisconsin

Early-Season Subzone A - That portion of the State encompassed by a line beginning at the Lake Michigan shore in Sheboygan, then west along State Highway 23 to State 67, southerly along State 67 to County Highway E in Sheboygan County, southerly along County E to State 28, south and west along State 28 to U.S. Highway 41, southerly along U.S. 41 to State 33, westerly along State 33 to County Highway U in Washington County, southerly along County U to County N, southeasterly along County N to State 60, westerly along State 60 to County Highway P in Dodge County, southerly along County P to County O, westerly along County O to State 109, south and west along State 109 to State 26, southerly along State 26 to U.S. 12, southerly along U.S. 12 to State 89, southerly along State 89 to U.S. 14, southerly along U.S. 14 to the Illinois border, east along the Illinois border to the Michigan border in Lake Michigan, north along the Michigan border in Lake Michigan to a point directly east of State 23 in Sheboygan, then west along that line to the point of beginning on the Lake Michigan shore in Sheboygan.

Early-Season Subzone B - That portion of the State between Early-Season Subzone A and a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Central Flyway

South Dakota

Unit A - Deuel, Hamlin, Codington, and Day Counties.

Unit B - Brookings, Clark, Kingsbury, and Lake Counties and those portions of Moody County west of I-29 and Miner County east of SD Highway 25.

Pacific Flyway

Idaho

East Zone - Bonneville, Caribou, Fremont and Teton Counties.

Oregon

Northwest Zone - Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone - Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone - Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union and Wasco Counties.

Washington

Southwest Zone - Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone - Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Farson-Edon Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area - Those portions of Teton County described in State regulations.

Ducks

Mississippi Flyway

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area - The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area - That portion of the State west of a line beginning at the Oklahoma border, north on I-35 to Wichita, north on I-135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area - Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area - The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone - Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area - That portion of the State west of I-35.

Texas

Regular-Season Open Area - That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I-35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area - The Central Flyway portion of the State except that area south of I-90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area - Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit - Portions of Fremont County.

Park and Bighorn County Unit - Portions of Park and Bighorn Counties.

Pacific Flyway

Arizona

Special-Season Area - Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area - See State regulations.

Utah

Special-Season Area - Rich County.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Eden-Farson Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone - State Game Management Units 11-13 and 17-26.

Gulf Coast Zone - State Game Management Units 5-7, 9, 14-16, and 10 - Unimak Island only.

Southeast Zone - State Game Management Units 1-4.

Pribilof and Aleutian Islands Zone - State Game Management Unit 10 - except Unimak Island.

Kodiak Zone - State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area - The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area - All of the municipality of Culebra.

Desecheo Island Closure Area - All of Desecheo Island.

Mona Island Closure Area - All of Mona Island.

El Verde Closure Area - Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas - All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

[FR Doc. 97–22047 Filed 8–19–97; 8:45 am]

BILLING CODE 4310–55–F

Proposed Rules

Federal Register
Vol. 62, No. 161
Wednesday, August 20, 1997

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes and Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes and all Model HS 748 series airplanes. This proposal would require inspection of the main hydraulic accumulator for corrosion, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct such corrosion, which could result in loss of certain hydraulic system functions, including nose wheel steering, hydraulic lowering of the landing gear, and main wheel brakes, which are essential for safe operation of the airplane.

DATES: Comments must be received by September 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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 (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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 97–NM–104–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, advises that extensive corrosion of the cylinder tube of the main hydraulic accumulator was found on certain British Aerospace BAe Model ATP airplanes and all Model HS 748 series airplanes. Such corrosion, if not detected and corrected in a timely manner, could result in loss of certain hydraulic system functions, including nose wheel steering, hydraulic lowering of the landing gear, and main wheel brakes, which are essential for safe operation of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin ATP–29–15, dated February 25, 1997; and HS748–29–49, dated February 25, 1997; which describe procedures for inspection of the main hydraulic accumulator for corrosion; and removal of any light surface corrosion found, application of protective treatment and restoration of the paint finish, or replacement of the accumulator, if necessary. The CAA classified these service bulletin as mandatory and issued British airworthiness directives 004–02–97, dated February 25, 1997, and 005–02–97, dated February 7, 1997, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are 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.

Explanation of Requirements of Proposed Rule

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, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $600, or $60 per airplane.

Currently, there are no British Aerospace Model HS 748 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD would be $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

British Aerospace Regional Jet [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–104–AD.

Applicability: Model BAe ATP airplanes having constructor's numbers 2002 through 2063 inclusive; and all Model HS 748 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the cylinder tube of the main hydraulic accumulator, which could result in loss of certain hydraulic system functions that are essential for safe operation of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection of the main hydraulic accumulator for corrosion, in accordance with British Aerospace Service Bulletin ATP–29–15, dated February 25, 1997; or HS748–29–49, dated February 25, 1997; as applicable. If any discrepancy is found, prior to further flight, accomplish the applicable corrective actions specified in the service bulletins.

(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 2: 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 §§ 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.

Issued in Renton, Washington, on August 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–21983 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–03–AD]

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model 369F and 369FF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems (MDHS) Model 369F and 369FF helicopters. This proposal would require removing the tail rotor control rod assembly (rod assembly) and replacing it with an airworthy rod assembly. This proposal is prompted by a failure of a rod assembly during a proof-load test conducted by the manufacturer. The actions specified by the proposed AD are intended to prevent buckling of the rod assembly when subjected to ultimate jam loads, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Aerospace Engineer, ANM–120L, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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 No. 97–SW–03–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to MDHS Model 369F and 369FF helicopters. This proposal would require removing the rod assembly, part number (P/N) 369D27516, and replacing it with an airworthy rod assembly, P/N 369D27516–5, within 300 hours time-in-service (TIS) after the effective date of the AD. On April 16, 1996, one rod assembly failed during a proof-load test conducted by the manufacturer. It was determined that the design of the rod assembly was inadequate for jam load conditions. This condition, if not corrected, could result in buckling of the rod assembly when subjected to ultimate jam loads, loss of tail rotor control, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model 369F and 369FF helicopters of the same type design, the proposed AD would require, within 300 hours TIS after the effective date of the AD, removing the rod assembly and replacing it with an airworthy rod assembly. Replacement of the rod assembly, P/N 369D27516, with an airworthy rod assembly, P/N 369D27516–5, constitutes a terminating action for the requirements of this AD.

The FAA estimates that 17 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4080.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

McDonnell Douglas Helicopter Systems: Docket No. 97–SW–03–AD.

Applicability: Model 369F and 369FF helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 300 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent buckling of the tail rotor control rod assembly (rod assembly) when subjected to ultimate jam loads, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the rod assembly, part number (P/N) 369D27516, and replace it with an airworthy rod assembly, P/N 369D27516–5. Replacement of the rod assembly with an airworthy rod assembly, P/N 369D275216–5, constitutes a terminating action for the requirements of this AD.

(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. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(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 helicopter

to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 13, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–22045 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 95N–0304]

RIN 0901–AA59

Dietary Supplements Containing Ephedrine Alkaloids; Notification of Intent to Reopen Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it will reopen the comment period for the proposed rule on dietary supplements containing ephedrine alkaloids that appeared in the **Federal Register** of June 4, 1997 (62 FR 30678). The agency intends to take this action because FDA has identified a number of inadvertent omissions in the administrative record. After the agency rectifies these omissions, it will announce in the **Federal Register** the reopening of the comment period for 75 days.

FOR FURTHER INFORMATION CONTACT: Margaret C. Binzer, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–401–9859, FAX 202–260–8957, or E-mail M.Binzer@Bangate.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1997, FDA published a proposed rule regarding the formulation and labeling of dietary supplements containing ephedrine alkaloids. FDA proposed this rule in response to reports of serious illnesses and injuries, including multiple deaths, associated with the use of dietary supplement products that contain ephedrine alkaloids and the agency's investigations and analyses of these reports of illnesses and injuries. Interested persons were given until August 18, 1997, to comment on the proposal.

It has come to FDA's attention that there are omissions in the administrative record. The agency has identified a number of missing pages in some documents that were placed in the administrative record and other minor problems. FDA will rectify these omissions and problems and make the corrected administrative record available with ample time for interested persons to review the record and prepare comments. Thus, the agency will correct the administrative record and will provide a new 75-day period for comment.

Dated: August 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination, FDA.

[FR Doc. 97–22127 Filed 8–15–97; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC 30–1–9645b: FRL–5876–9]

Approval and Promulgation of State Implementation Plan, South Carolina: Listing of Exempt Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 6, 1996, the South Carolina Department of Health and Environmental Control submitted revisions to the South Carolina State Implementation Plan (SIP) involving the addition of Supplement C to the air quality modeling guidelines located in 61–62.5 Standard 7, Prevention of Significant Deterioration. In the final rules section of this **Federal Register**, the EPA is approving the SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by September 19, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Region 4 Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

South Carolina Department of Health and Environmental Control, 600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404/562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 22, 1997.

R. F. McGhee,

Acting Regional Administrator.

[FR Doc. 97–21918 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 214, 215, and 242

[DEARS Case 95–D715]

Defense Federal Acquisition Regulation Supplement; Past Performance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense (DoD) has decided to withdraw a proposed rule published at 60 FR 57691, November 17, 1995. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1091 of the Federal Acquisition Streamlining

Act of 1994 (Pub. L. 103–355) and Office of Federal Procurement Policy Letter 92–5, Past Performance Information. Subsequent to publication of the proposed rule, numerous policy issues relating to the collection and appropriate use of past performance information were identified. The DoD Past Performance Integrated Process Action Team (IPT) is currently determining the appropriate resolution to these issues. Therefore, DFARS Case 95–D715 is closed and the proposed rule is withdrawn. A new DFARS case will be opened after the DoD Past Performance IPT develops its recommendations.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97–21889 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 96–D303]

Defense Federal Acquisition Regulation Supplement; Cost Reimbursement Rules for Indirect Costs—Private Sector

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide additional guidance on defense capability preservation agreements.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 20, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D303 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) permits DoD to enter into a defense capability preservation agreement with a defense contractor where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its defense contracts. To implement Section 808, an interim rule was published in the **Federal Register** on May 13, 1996 (61 FR 21973), that added DFARS subsection 231.205–71, Defense capability preservation agreements.

This proposed rule revises subsection 231.205–71 to add additional guidance for evaluating requests for defense capability preservation agreements, and to add cost reimbursement rules to apply if DoD enters into such an agreement with a contractor. Specifically, this rule differs from the interim rule by (1) redesignating paragraph (b) as paragraph (e); (2) adding paragraphs (b) Definition, (c) Purpose and guidelines, and (d) Cost-reimbursement rules; and (3) making editorial changes. Due to the differences between the two rules, a proposed rule is being promulgated to obtain further public comment prior to finalizing the rule.

Public comments on the interim rule were received from three sources. All comments were considered in the development of this proposed rule.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D303 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) applies because the proposed rule contains information collection requirements. The Office of Management and Budget (OMB) has approved an information collection concerning defense capability preservation agreements through July 31, 1999, under OMB Control Number 0704–0387, based on the requirements in the interim rule. However, the actual number of respondents requesting defense capability preservation agreements since publication of the interim rule on May 13, 1996, is lower than previously estimated. Accordingly, the estimate of the annual number of respondents is decreased from 50 to 10, and the estimated annual information collection burden is decreased from 4000 to 800 hours.

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Part 231 be amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–71 is revised to read as follows:

231.205–71 Defense capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), DoD may enter into a defense capability preservation agreement with a contractor. As authorized by Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), such an agreement would permit the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on its defense contracts.

(b) *Definition.* ''Incremental indirect cost,'' as used in this subsection, means an additional indirect cost that results from performing private sector work described in a defense capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a defense capability preservation agreement is to broaden and strengthen the industrial base by providing an incentive for a company to obtain new private sector work, thereby reducing DoD's cost of doing business.

DoD will use the following guidelines to evaluate requests for defense capability preservation agreements:

(1) the Under Secretary of Defense for Acquisition and Technology must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b).

The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a company is able to obtain.

(2) An agreement generally will be considered only for a company or business segment with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to DoD, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by DoD.

(d) *Cost-reimbursement rules.* If DoD enters into a defense capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) DoD may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, DoD may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, DoD will consider factors such as the impact of pre-existing firm-fixed-price DoD contracts on the amount of costs that would be reimbursed by DoD, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a defense capability preservation agreement, together with appropriate justification, through the Deputy Under Secretary of Defense for Industrial Affairs and Installations, to the Under Secretary of Defense for Acquisition and Technology, who has exclusive approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

[FR Doc. 97–21892 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 97–D012]

Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Reviews

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise guidance pertaining to the conduct of Contractor/Insurance Pension Reviews (CIPRs).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 20, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R. G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 97–D012 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Subpart 242.73 to more clearly define requirements for conducting CIPRs; to eliminate the requirement for conducting a CIPR every 2 years; and to require the performance of special CIPRs under certain circumstances.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, because the rule applies only to contractors whose annual qualifying sales to the Government exceed $40 million, and no small entities are known to meet this criteria. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D012 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule imposes no information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 242 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION

2. Sections 242.7301 through 242.2703 are revised to read as follows:

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of

insurance/pension costs in Government contracts. Insurance/pension specialists and the Defense Contract Audit Agency (DCAA) assist ACOs in making these determinations by conducting CIPRs.

(b) CIPRs can take the following forms:

(1) *Initial CIPR.* A comprehensive review of the contractor's insurance program, pension plan, and other deferred compensation plan. Includes a detailed review of the contractor's policies, procedures, and practices to determine whether the programs and plans in compliance with FAR and Cost Accounting Standards (CAS).

(2) *Special CIPR.* A review of the contractor's insurance program, pension plan, or other deferred compensation plan where the review concentrates on specific significant areas.

(3) *Incurred cost CIPR.* A review of costs incurred for insurance, pension, or other deferred compensation to determine allowability and compliance with FAR, CAS, and contract clauses.

(4) *Forward pricing CIPR.* A review of costs proposed for insurance, pension, or other deferred compensation to determine allowability and compliance with FAR and CAS.

(c) As the DoD Executive Agency, the Defense Logistics Agency provides program management and participates with DCAA in the performance of all CIPRs meeting the criteria in 242.7302.

(d) When special reviews of the contractor's insurance/pension program are desired, forward a request to the ACO. The review should be performed as part of an ACO-initiated special CIPR or, if possible, as part of the incurred cost or forward pricing CIPR if one is scheduled to be conducted in the near future.

242.7302 Requirements.

(a) An initial CIPR shall be conducted within 2 years after a contractor first exceeds $40 million of annual qualifying sales to the Government. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.804, or which are contracts other than firm-fixed-price or fixed-price with economic price adjustment. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR shall be performed for all contractors (including, but not limited to, those meeting the requirements in paragraph (a) of this section), when any of the following circumstances exists and it is anticipated that there may be a significant impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in the insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) Follow-up on contractor implementation of prior CIPR recommendations is needed.

(5) Verification of Government recovery of credits is needed.

(c) Incurred cost and forward pricing CIPRs shall be performed when it is determined that participation of an insurance/pension specialist is essential to determine cost allowability.

242.7303 Responsibilities.

(a) The administrative contracting officer is responsible for—

(1) Determining the need for a CIPR under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate Defense Logistics Agency activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the insurance/pension specialist and DCAA;

(4) Reviewing the CIPR report, advising the contractor of the results, and asking the contractor to submit any significant changes in insurance/pension plans for review and acceptance prior to making the change;

(5) Providing other interested contracting officers copies of documents related to the CIPR;

(6) Ensuring adequate follow-up on all CIPR recommendations; and

(7) Performing contract administration responsibilities related to Cost Accounting Standards administration as delineated in FAR subparts 30.2 and 30.6.

(b) The insurance/pension specialist responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the military departments and DCAA a copy of the schedule;

(2) Heading the team that conducts the review (the team leader). Another party may be designated as the team leader when agreed to by both the insurance/pension specialist and that party. The team leader is responsible for—

(i) Maintaining complete documentation for CIPR reports;

(ii) To the extent possible, resolving discrepancies between adult reports and CIPR draft reports prior to releasing the final CIPR report;

(iii) Preparing and distributing the final CIPR report;

(iv) Providing the final audit report and/or the insurance/pension specialist's report as an attachment to the CIPR report; and

(v) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(3) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) DCAA is responsible for—

(1) Participating as a member of the CIPR team;

(2) Submitting information and advice to the team based on analysis of the contractor's books, accounting records, and other related data;

(3) Issuing an audit report to the insurance/pension specialist for incorporation into the final CIPR report; and

(4) Performing contract audit responsibilities related to Cost Accounting Standards administration as delineated in FAR subparts 30.2 and 30.6.

[FR Doc. 97–21891 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket PS–128; Amdt. 199–15]

RIN 2137–AC84

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration proposes to modify current procedures in its drug testing regulations governing situations in which pipeline employees test positive on a drug test. The proposed changes would require pipeline operators to require employees who test positive for the presence of prohibited drugs or who refuse to take a required drug test to be evaluated by a substance abuse professional (SAP), who could require an employee to undergo a rehabilitation program prior to the

employee's return to duty. The reason for this change is to conform RSPA's drug and alcohol testing regulations with the drug and alcohol regulations of the other Department of Transportation operating administrations. In addition, RSPA is proposing to define ''covered employee'' and ''covered function.'' Finally, this rule would allow Medical Review Officers (MROs) who meet the SAP qualifications to perform the evaluation of individuals who have had a verified positive drug test or who have refused to take a required test.

DATES: Comments should be received by October 20, 1997. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Dockets Unit, Room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the Docket Number PS–128 and the RSPA Rulemaking Number 2137–AC84. Commenters should submit 3 copies. Commenters wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–6199, Fax: (202) 366–4566, e-mail: catrina.pavlik@RSPA.dot.gov.

SUPPLEMENTARY INFORMATION: The February 15, 1994, publication of the Department's common preamble to the Limitation on Alcohol Use by Transportation Workers discusses the requirement for a substance abuse professional evaluation when an employee tests positive for alcohol (59 FR 7302). RSPA's alcohol testing regulations include a requirement that pipeline operators use a SAP to evaluate pipeline employees whose test results indicate an alcohol concentration of 0.04% or greater, or who fail or refuse to undergo an alcohol test. These individuals are required to follow a rehabilitation program that is prescribed by the SAP before returning to duty. Unlike the other modal administrations, RSPA did not incorporate a similar requirement on pipeline operators whose employees tested positive for the presence of prohibited drugs or refused to undergo a drug test. Under RSPA's drug testing regulations, an employee who either tests positive for a prohibited drug or who refuses to take a required drug test must be interviewed by an MRO to confirm a positive drug test and to determine whether there is a legitimate medical explanation for the confirmed test or for an employee's refusal to be tested. Once confirmed, the MRO is required to determine when the employee is eligible to take a return-to-duty test. Unlike the alcohol testing rules, the drug testing rules do not require employees to follow a rehabilitation program prescribed by a SAP. Upon receiving a negative test result from a return-to-duty test, the MRO is responsible for establishing an unannounced follow-up testing schedule for that employee. This schedule is not permitted to exceed 60 months.

Because of the desire to conform RSPA's drug testing regulations with the drug testing regulations of the other modal administrations, RSPA is proposing to require pipeline operators to utilize SAPs to evaluate pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require an employee to complete a rehabilitation program before being eligible to return to duty.

Conformity among the modes will assist with overall administration of RSPA's drug testing regulations. Currently 14% of the pipeline employees subject to RSPA's drug testing regulations are also subject to the drug testing regulations of one or more of the other DOT modes. According to the FY95 Management Information System (MIS) reports there are approximately 160,906 employees covered by RSPA's drug testing regulations. Of that number, 41 are also covered by FAA, 26,969 are also covered by FHWA, 210 are also covered by FTA, 216 are also covered by USCG and none are covered by FRA. Employees presently dual-covered by another operating administration are already required to undergo a substance abuse professional evaluation for a positive drug test. In addition to conforming RSPA's drug rules with the other modal administrations, this action would make RSPA's drug testing rule consistent with RSPA's alcohol rule.

RSPA sought informal feedback from the American Gas Association (AGA) and the American Petroleum Gas Association (APGA) on whether this requirement would have an impact on pipeline operators. After an informal survey of several of their members, AGA and APGA stated that they felt this requirement would not be a burden to pipeline operators since those members are already adhering to this procedure for activities covered by other DOT operating administrations.

Requiring a SAP evaluation for a positive drug test or an employee's refusal to test would add an additional layer of activity to the return-to-duty role that has up until now involved only the MRO. If an MRO is certified as a SAP, he could perform all functions that would be required under the proposed regulations. This would entail certifying a test result as a negative/positive drug test. If a test is confirmed as positive or an individual refuses to take a test, the MRO could perform the SAP evaluation to determine what treatment, if any, is needed. Then, the MRO could schedule the return-to-duty test and follow-up testing. However if the MRO is not certified as a SAP, the MRO would continue to certify a test result but in the event of a positive test or refusal to take a test, the MRO would have to refer the employee to a SAP for evaluation and treatment. The SAP would consult with the MRO when scheduling the return-to-duty test and the follow-up testing.

RSPA currently defines ''employee'' in its drug testing regulations as a person who performs on a pipeline or Liquefied Natural Gas (LNG) facility an operating, maintenance, or emergency-response function regulated by part 192, 193, or 195. In addition, RSPA has published guidance material using and defining the terms ''covered employee'' and ''covered function.'' As used in the guidance, a ''covered employee'' means ''employee.'' RSPA proposes to substitute the word ''employee'' with the term ''covered employee'' in the definition section of the drug testing regulations (199.3), and proposes to add the definition of ''covered function.'' In the RSPA alcohol testing regulations these terms are already defined in § 199.205, ''Definitions.'' RSPA has determined that there is a need to make these definitions part of § 199.3 for clarification purposes and for consistency between the RSPA drug and alcohol testing regulations. The proposed changes would enable pipeline operators to know the accurate meaning of these phrases and how they pertain to the drug and alcohol testing regulations.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposal requires that pipeline employees who either test positive for

prohibited drugs or refuse to be tested must be evaluated by a substance abuse professional (SAP) who could require that an employee undergo rehabilitation prior to the employee's return to duty in a covered function. The reason for this rule change is to conform RSPA's drug testing program to its alcohol testing program as well as the drug and alcohol testing programs of all other DOT modes.

RSPA concluded that because all pipeline companies already employ SAPs for their alcohol testing programs it is likely the same professional will be used to perform this same function on the drug testing program. Further, this proposal requires that employees who test positive could be required to undergo rehabilitation before their return to duty. RSPA, however, does not require that the employer pay for this treatment. Many employees may also be terminated or placed in non-covered functions rather than be given the opportunity for treatment. Therefore, the cost of the treatment is not the financial responsibility of the employer. Another factor that was taken into account is the fact that the most recent drug testing results show that only 0.8% of the employees tested positive for drugs. Therefore, the number of employees who would need to be evaluated by a SAP is minimal. Given the fact that pipeline companies already employ or presently contract with SAPs, they are not required to pay for nor offer rehabilitation for employees who test positive, and that a minimal number of employees would require evaluation, RSPA believes that this rule will have little to no economic impact on any pipeline company. RSPA finds that this rule is not significant under section 3(f) of Executive Order 12866 and also not significant under the Regulatory Policies and Procedures of the Department of Transportation.

Executive Order 12612

This regulation would not have substantial direct effect on states, on the relationship between the Federal 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 (52 FR 41685; October 30, 1987), RSPA has determined that this regulation would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

Because this rule will require little to no additional cost to pipeline operators (see discussion on the regulatory evaluation) RSPA certifies under section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this rule.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety.

In consideration of the foregoing RSPA proposes to amend, 49 CFR part 199 as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Section 199.3 would be amended by revising the definition of ''employee'' and adding a new definition of ''covered function'' to read as follows:

§ 199.3 Definitions.

* * * * *

Covered employee means a person who performs on a pipeline or LNG facility an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195 of this chapter. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function means an operations, maintenance, or emergency-response function conducted on the pipeline or LNG facility that is regulated by Part 192, 193, or 195.

* * * * *

3. Section 199.11 would be amended by revising paragraph (e) to read as follows:

§ 199.11 Drug tests required.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or does not pass a drug test may not return to duty in the covered function until the covered employee has been evaluated by a substance abuse professional, and has properly followed any prescribed rehabilitation program. The covered employee shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

4. Section 199.15 would be amended by revising paragraph (d)(2) and adding new paragraphs (e) and (f) to read as follows:

§ 199.15 Review of drug testing results.

* * * * *

(d) * * *

(2) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall require that the covered employee who engages in conduct prohibited under § 199.9 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the covered employee needs in resolving problems associated with illegal drug use.

* * * * *

(e) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(f) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving programs with drug abuse does not refer the covered employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the

substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a covered employee for assistance provided through:

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for drug problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program, or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

Issued in Washington, DC, on August 13, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–22048 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 62, No. 161

Wednesday, August 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Fourmile Timber Sale Within the Patrick Butte Roadless Area, Payette National Forest, Adams County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service published a revised notice of intent for the Fourmile Timber Sale in the **Federal Register** March 26, 1993 (Vol. 58, No. 57, pages 16394–16395). That revised notice is hereby revised to show a change in the schedule of the EIS.

The Draft Environmental Impact Statement (DEIS) was released August 1993. Due to the large fires of 1994 the Final Environmental Impact Statement (FEIS) was put on hold while the interdisciplinary team members worked on the fires and the fire salvage analysis. In 1996, the Forest formed a new interdisciplinary team to complete the FEIS. The FEIS is now scheduled to be released in August of 1997.

ADDRESSES: Send written comments to David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Debbie Ellis, Team Leader, phone (208) 347–0314; or Kimberly Brandel, District Ranger, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The USDA Forest Service is proposing to reconstruct roads, harvest and regenerate timber in the Fourmile Timber Sale area. This sale lies partially within the Patrick Butte Roadless Area, Adams County, Idaho. Within the proposed sale area, drainages include: Threemile, Fourmile, and Sixmile Creeks which are tributaries to the Little Salmon River.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

Dated: August 8, 1997.

David F. Alexander,

Forest Supervisor.

[FR Doc. 97–22015 Filed 8–19–97; 8:45 am]

BILLING CODE 3410–00–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Intent To Prepare an Environmental Impact Statement for the Jackson County Water Association, Jackson County Lake Project and Notice of Public Scoping Meeting; Correction

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent and notice of meeting; correction.

SUMMARY: This document contains clarifications to the Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting published Friday, August 1, 1997, (62 FR 41336). The notice failed to specifically mention that the proposed project, because it may inundate National Forest System Lands, may involve negotiating a land exchange with the U.S. Forest Service (USFS). The project proposes to construct a 115 foot tall dam on the Laurel Fork of the Rockcastle River in Jackson County, Kentucky creating a 640 acre lake, storing approximately 28,440 acre feet of water and is located within the Daniel Boone National Forest. Any of the alternatives evaluated in the Environmental Impact Statement that may impact National Forest System Lands will involve negotiations with the USFS pursuant to its land exchange process promulgated at 36 CFR 254.

DATES: Written comments on the scope of the EIS will be accepted 15 days after the scoping meeting is held.

ADDRESSES: Comments should be sent to Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, Mail Stop 1571, Washington, DC 20250, telephone (202) 720–1649 or fax (202) 720–0820, e-mail: mplank@rus.usda.gov.

FOR FURTHER INFORMATION CONTACT: Mark S. Plank at the address and telephone number above or John Strojan, District Ranger, Daniel Boone National Forest, London Ranger District, 761 South Laurel Road, London, KY 40744, (606) 864–4163, fax (606) 878–0811.

Dated: August 14, 1997.

John P. Romano,

Deputy Administrator, Water and Environmental Programs.

[FR Doc. 97–22049 Filed 8–19–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan, Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Proton Electronic Industrial Co. (Proton), the Department of Commerce (the Department) initiated a review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan on May 21, 1997, for the period April 1, 1996 through March 31, 1997. On June 26, 1997, Proton filed a timely withdrawal of its request for this review. Because there were no requests for review from other interested parties, we are terminating this review.

EFFECTIVE DATE: August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or Michael J. Heaney, Office of Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3833 or 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department published in the **Federal Register** (49 FR 18336) the antidumping duty order on color television receivers, except for video monitors, from Taiwan. On April

2, 1997, the Department published in the **Federal Register** (62 FR 15655) the opportunity to request an administrative review. On April 30, 1997, Proton requested a review for the period April 1, 1996 through March 31, 1997. On May 21, 1997, in accordance with 19 CFR 353.22(c), we initiated an administrative review for the period April 1, 1996 through March 31, 1997 (61 FR 27720).

We received a timely request for withdrawal for this request from Proton on June 26, 1997. Because there were no requests for review from other interested parties, we are terminating this review in accordance with 19 CFR 353.22(a)(5) of the Department's regulations.

Dated: August 14, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement, Group III.

[FR Doc. 97–22084 Filed 8–19–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway, Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

EFFECTIVE DATE: August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone (202) 482–4106, or 482–3814, respectively.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Amendment of Final Results

On December 13, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (61 FR 65522). The review covered 24 exporters, and the period April 1, 1993, through March 31, 1994.

On December 12, 1996, petitioners, The Coalition for Fair Atlantic Salmon Trade, filed allegations of clerical errors with regard to the final results with respect to two respondents, Skaarfish A/S (Skaarfish) and Norwegian Salmon A/S (Norwegian Salmon). We also received allegations from both respondents on December 18, 1996, and December 30, 1996. Petitioners submitted rebuttal briefs on January 6, 1997.

Petitioners contends that the Department made a ministerial error in the final results by not adding amounts for indirect selling expenses and interest expenses to the revised cost of cultivation for both Norwegian Salmon and Skaarfish. Respondents did not comment on petitioner's allegation. After a review of petitioner's allegation, we agree with petitioners and have corrected these errors for the amended final results.

Norwegian Salmon maintains that the Department made a ministerial error by incorrectly deducting duty and brokerage applicable to French sales from U.S. sales, rather than deducting these expenses from French sales. In addition, respondent maintains that the Department double-counted U.S. credit expense. Petitioners did not comment on respondents' allegations. After a review of respondent's allegations, we agree with respondent and have corrected these errors for the amended final results.

Norwegian Salmon also maintains that the Department erroneously double-counted certain expenses associated with damages resulting from underwater explosions affecting Norwegian Salmon's Farm C. Respondent maintains that the indemnity that Farm C received covered all of Farm C's expenses associated with the explosion and that the Department erred by subtracting the amount Farm C claimed as a loss in its financial statement. Petitioner disagrees with respondent. Petitioner states that the Department should reject the allegation because it concerns a methodological determination rather than a ministerial error as described in section 353.28(d) of the Department's regulations. Moreover, petitioner states that the Department's cost of production calculations correctly reflect the actual amounts recorded in Farm C's income statement and accounting ledgers for the loss and indemnity associated with the fish killed by the underwater detonations.

We disagree with respondent that this is a ministerial error. Since 751(f) of the Act defines the term ''ministerial error'' as errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial. The error alleged by respondent does not fall within this definition, and therefore, we determine that it is not a ministerial error.

Amended Final Results of Review

As a result of comments received and programming errors corrected, we have revised our final results and determine that the following margins exist for the period April 1, 1993, through March 31, 1994:

Manufacturer/exporter	Margin (percent)
ABA A/S	[1] 31.81
Artic Group	[2] 31.81
Artic Products Norway A/S	[1] 31.81
Brodrene Sirevag A/S	[1] 23.80
Cocoon Ltd A/S	[1] 31.81
Delfa Norge A/S	[1] 31.81
Delimar A/S	([3])
Deli-Nor A/S	([3])
Fjord Trading LTD. A/S	[1] 23.80
Fresh Marine Co. Ltd	[2] 31.81
Greig Norwegian Salmon	[2] 31.81
Harald Mowinckel A/S	[1] 23.80
Imperator de Norvegia	[1] 31.81
More Seafood A/S	[1] 31.81
Nils Willksen A/S	[1] 31.81

Manufacturer/exporter	Margin (percent)
North Cape Fish A/S	[1] 31.81
Norwegian Salmon A/S	13.88
Norwegian Taste Company A/S	[2] 31.81
Olsen & Kvalheim A/S	[1] 23.80
Sekkingstad A/S	[1] 23.80
Skaarfish-Mowi A/S	2.30
Timar Seafood A/S	[1] 31.81
Victoria Seafood A/S	[2] 31.81
West Fish Ltd. A/S	[1] 23.80

[1] No shipments during the period; margin from the last administrative review.
[2] No response; highest margin from the original LTFV investigation.
[3] No shipments or sales subject to this review; the firm had no individual rate from any segment of this proceeding.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Further, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The case deposit rates for the reviewed firms will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department or the LTFV investigation, the cash deposit rate will be 23.80 percent, all the others rate from the LFTV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 5, 1997.

Roberta S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–22083 Filed 8–19–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 970731187–7187–01]

RIN 0648–ZA32

Financial Assistance for the Pribilof Environmental Restoration Program

AGENCY: Office of Finance and Administration (OFA), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of federal assistance.

SUMMARY: NOAA issues this notice describing the procedures under which applications will be accepted, and how NOAA will determine which applications it will fund for environmental restoration work to be completed on the Pribilof Islands, Alaska. Pursuant to Public Law 104–91 (Pub. L. 104–91), Section 3(d) requires the use of local entities and residents of the Pribilof Islands, to the maximum extent practical for completion of environmental restoration work to be performed. Applications will be solicited for Part II of the NOAA's Pribilof Islands Environmental Cleanup Project. This notice implements environmental restoration work to commence in fiscal year 1997 (FY97). Specifically, Remediation of Petroleum Contaminated Soil as defined in the Pribilof Islands Expanded Site Investigation Report and in conjunction with the Two-Party Agreement executed between NOAA and Alaska Department of Environmental Conservation (ADEC), State of Alaska. A maximum amount of $8.8 Million is available for cooperative agreements awarded to implement Part II.

Complete applications must be received or postmarked by September 19, 1997. Applicants must submit one signed original and two copies of the complete application. No facsimile applications will be accepted. Generally, the time required to process applications is 60 days from the closing date of the solicitation.

ADDRESSES: Applications should be sent to Western Administrative Support Center (WASC), Facilities and Logistics Division, 7600 Sand Point Way NE, Seattle, WA 98115. Telephone: (206) 526–4434 or (206) 526–6160. Application kits, with instructions for completion may be obtained from the NOAA Grants Management Division, SSMC2, Room 9358, 1325 East-West Highway, Silver Spring, MD 20910. Telephone (301) 713–0946.

FOR FURTHER INFORMATION CONTACT: For questions regarding grants management policies and interpretation contact: Steve Drescher at (301) 713–0946. For information regarding technical aspects of specific projects: Mary Moloseau Goetz at (206) 526–6647 or Anthony Mercadante at (206) 526–6674. Copies of the Pribilof Islands Expanded Site Investigation and the Two-Party Agreement may be obtained from the National Archives, Anchorage Regional Office, 645 West 3rd Ave., Anchorage, Alaska.

SUPPLEMENTARY INFORMATION: The *Catalog of Federal Domestic Assistance* (CFDA) number for this program is 11.469, Congressionally Identified Construction Projects.

I. Introduction

A. Background

Under the provisions of Public Law 104–91, the Secretary of Commerce shall, subject to the availability of appropriations, provide assistance for the cleanup of landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants including petroleum products and their derivatives, on lands which the U.S. Government abandoned, quitclaimed, or otherwise transferred or are obligated to transfer, to local entities or residents on the Pribilof Islands, Alaska pursuant to the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*), as amended, or other applicable law.

Work to commence in FY97 under section one of this notice will include Remediation of Petroleum

Contaminated Soil on both St. Paul and St. George Islands.

B. Funding

NOAA issues this notice to solicit applications for federal assistance, describing the intent to award cooperative agreements, the procedures under which applications will be accepted for Part II and how NOAA will select the applications it will fund.

Sharing of project costs by applicants is not required and will not be considered in the technical evaluation of proposals.

II. Funding Priorities

Part II of this Program will be for Petroleum Contaminated Soil Remediation as per the Pribilof Islands Expanded Site Investigation and in conjunction with the Two-Party Agreement referenced above.

Great consideration will be given to applications that will promote the economic stability or future self-sufficiency of the recipient.

III. How To Apply

A. Eligible Applicants

Applications for cooperative agreements may be made in accordance with the procedures set forth in this notice, by any local entity or resident of the Pribilof Islands, as defined in the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*), as amended, and who is a citizen or national of the United States.

Federal Government employees including full-time, part-time, and intermittent personnel are not eligible to submit an application under this solicitation.

Assistance from NOAA employees is available to eligible applicants, by telephone and will be limited to such issues, as the program goals, funding, priorities and application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring competitive proposal.

B. Duration and Terms of Funding

Generally, cooperative agreements are awarded for a period of 1 year, but no more than 18 months.

If an application for an award is selected for funding, the Department has no obligation to provide any additional future funding in connection with the award. Amendments to increase funding or extend the period of performance is at the discretion of the Department.

Publication of this announcement does not obligate NOAA to award any specific grant or cooperative agreement or to obligate any part of the entire amount of funds available.

Format

Applications for project funding must be complete, and must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must respond to priority(ies) contained in section II of this document. Project applications must be clearly and completely submitted in the format that follows:

1. Cover sheet: An applicant must use Standard Form 424 (revised 4–92) as a cover sheet for each project. The forms are included in the NOAA Application kit.

2. Project Budget: A budget must be submitted for each project, using SF–424C (Rev. 4/92), Budget Information Construction Programs. The applicants must submit cost estimates of the direct total project costs. Estimates of the direct costs must be specified in the categories listed on the SF–424C. A budget narrative/detail must also be provided as described in the NOAA Application Kit. The budget may also include an amount for indirect costs, if the applicant has an established indirect cost rate with the Federal Government. A copy of the current, approved, negotiated indirect cost Agreement with the Federal Government must be included with the application. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. This restriction also applies to any subrecipient of this program. Contingencies for construction costs are limited to 10% of total costs.

Fees or profits are not allowable costs under the awards.

The total costs of the project consist of all costs to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of an award and ends on the date specified in the award. Only costs incurred during the award period shall be considered allowable, allocable and reasonable. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to awards, are not reimbursable.

3. Project Narrative Description: The project must be completed and accurately described, as follows:

a. Executive Summary. Provide a brief discussion on the nature of the problem, the location of the project, and a historical/background information as it relates to the project.

b. Project Objectives: State what the proposed project is expected to accomplish, and describe how this will eliminate or reduce the problem(s) described in 3.a. above.

c. Participation in the project or any part thereof by Persons or Groups Other Than the Applicant: Describe the nature of such participation.

d. Federal, State, and Local Government Coordination/Activities: List any existing Federal, state, or local government programs or activities that this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities.

e. Project Work Plan: The Work Plan statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated objectives. A milestone chart that outlines major goals, supporting work activities, and time frame, and individuals responsible for various work activities may be used to describe the work to be performed. The narrative should include information that responds to the following questions:

(1) How will the project be designed? What design incurred in the performance of project tasks to criteria will be used? (e.g., pertinent regulatory compliance such as environmental and safety regulations, cost and technology effectiveness, and etc.)

(2) What will be accomplished? (e.g., Petroleum Contaminated Soil Remediation)

(3) What work, activities or procedures (be specific as possible) will be undertaken to accomplish the project objectives?

(4) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting). All key personnel and subcontracts proposed by the applicant are subject to the review and approval of NOAA. NOAA will maintain a high level of substantial involvement during the project period to ensure compliance by the recipient and its subcontractors with all statutory

requirements, including environmental compliance.

(5) Which regulations govern the proposed type of work (e.g., state or federal? Environmental or Safety?, ADEC's Soil Remediation or Solid Waste regulations?) and project objectives? Who will be responsible for ensuring that the proposed project activities and objectives satisfy the governing regulations.

(6) The narrative/milestone chart should graphically illustrate:

(a) Steps to accomplish the major activities;

(b) Critical path(s), supporting activities, and associated time lines (e.g., month 1, month 2); and

(c) The individual(s) responsible for the various activities. This information is critical to understanding and reviewing the application. NOAA encourages applicants to provide sufficient detail. Applications lacking sufficient detail will be eliminated from further consideration.

f. Project Management and Personnel Qualifications: Describe how the project will be organized and managed. Provide an organizational chart and line of communication. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontractors, applicants, as appropriate, must follow procurement guidance in 15 CFR part 24, ''Grants and Cooperative Agreements to State or Local Governments'', or OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations, Commercial Organizations and individuals. If a consultant and/or subcontractor is selected prior to the submission of an application, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

IV. Evaluation of Proposed Projects

NOAA will solicit technical evaluations of each project application from a Source Evaluation Board composed of appropriate public sector experts. Individual point scores will be given to project applications, based on the following criteria:

1. Problem Description and Conceptual Approach for Resolution. Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (25 points)

2. Soundness of Project Design/ Technical Approach. Applications will be evaluated to determine whether or not the applicant provided sufficient information to evaluate the project technically and, if so, the strengths and/ or weaknesses of the technical design proposed for problem resolution. (25 points)

3. Project Management and Experience and Qualification of Personnel. The organization and management of the project, and other key personnel in terms of related experience and qualifications will be evaluated. Those projects that do not identify the key personnel or project manager with his or her qualifications will receive a lower point score. (20 points)

In reviewing and evaluating applications that include consultants and subcontracts, NOAA will consider the following additional criteria:

a. Is the involvement of the primary applicant necessary to conduct the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

4. Project Evaluation. The effectiveness of the applicant's proposed methods to evaluate the project in terms of meeting its goals and objective will be evaluated. (10 points)

Project Costs. The justification and allocation of the budget in terms of the work to be performed and reasonable costs will be evaluated. (20 points)

V. Selection Procedures and Project Funding

After applications have been evaluated and ranked, the Director WASC, will select from the highest-ranked applicants the number of projects recommended for funding, ensuring that there is no duplication with other projects to be funded by NOAA or other Federal organizations. The Director will also take into consideration the applicants prior experience and performance under other federal assistance awards before making final selections. The list of recommended applicants will be forwarded to NOAA Grants Management Division to issue the award(s). Applicants not recommended for funding are not given further consideration and will be notified of non-selection.

The exact amount of the funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA program and grants management representatives. Projects/remediation should not be initiated in expectation of Federal funding until a notice of award document is signed and issued by the Grants Officer.

It is the Department's policy to make awards to applicants who are competently managed, responsible, and committed to achieving the objectives of the awards they receive. Adverse information concerning the applicant's financial stability, past experience with Federal grants, and other information about the applicant's responsibility may result in an application not being considered for funding.

VI. Administrative Requirements

A. Obligation of the Applicant

1. An Applicant must: a. Meet all application requirements and provide all information necessary for the evaluation of the project proposal.

b. Be available, upon request, in person, by telephone or by designated representative, to respond to questions during the review and evaluation of the project proposal.

2. Primary Applicant Certification. Applicants will be required to submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying''. The following explanations are hereby provided:

a. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

b. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

c. Anti-Lobbying. Person(s) (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provision of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions''. The lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage

limit for affected programs, which ever is greater; and

d. Anti-Lobbying Disclosure. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

3. Lower Tier Certifications. Successful applicants shall require applicants/bidders for subgrants, contracts, subcontractors, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'', and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients of subrecipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the awards document.

B. Other Requirements

Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Name check review. All non-profit and for profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

False Statements. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

4. Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to DOC are made.

6. Buy American-Made Equipment or Products. Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program.

7. Preaward Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover Preaward costs.

VII. Classification

A notice of availability of financial assistance for this program will also appear in the Commerce Business Daily.

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

The application mentioned in this notice is subject to the Paperwork Reduction Act. It has been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB Control Number.

Authority: Public Law 104–91.

Dated: August 15, 1997.

D. James Baker,

Under Secretary for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration.

[FR Doc. 97–22121 Filed 8–19–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081297A]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Coral, Coral Reefs, and Live/Hard Bottom Habitat Sub-Group.

DATES: The meeting will be held September 16-17, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Florida Marine Research Institute, 100 Eighth Avenue, SE, St. Petersburg, FL 33701.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

September 16, 1997, 1:00 p.m. to 5:30 p.m.; September 17, 1997, 8:30 a.m. to 5:00 p.m.

The Sub-Group will meet to review coral and live bottom habitat description and distribution information in state, Federal and regional systems, and to discuss fishing and non-fishing threats to coral and live bottom habitats. The Sub-Group will also discuss recommendations for the Council's draft habitat policy statement on coral and live bottom habitat.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 8, 1997.

Dated: August 14, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–21985 Filed 8–19–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m. Wednesday, September 3, 1997.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22152 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, September 8, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22153 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, September 15, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22154 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, September 22, 1997.

PLACE: 1155 21st St., NW., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22155 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, September 29, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22156 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 5, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22157 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 12, 1997.

PLACE: 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22158 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 19, 1997.

PLACE: 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22159 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 26, 1997.

PLACE: 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22160 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Wednesday, September 3, 1997.

PLACE: 1155 21st St., NW., Washington, DC Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed amendments to Rule 1.55, Risk Disclosure Requirements for Futures Commission Merchants and Introducing Brokers.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–22161 Filed 8–18–97; 11:15 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Deployable Universal Combat Earthmover (DEUCE)

AGENCY: U.S. Army Tank-automotive and Armaments Command, Army.

ACTION: Notice of intent.

SUMMARY: The Product Manager, Construction Equipment/Material Handling Equipment (PM CE/MHE) has prepared a Life-Cycle Environmental Assessment (LCEA) which examines the potential impacts to the natural and human environment from the life cycle activities of the Deployable Universal Combat Earthmover (DEUCE). Based on the LCEA, PM CE/MHE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement is not required and the Army is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to, U.S. Army Tank-automotive and Armaments Command (TACOM), ATTN: AMSTA–DSA–TA–CE (DEUCE), Warren, MI 48397–5000

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the Deuce Life-Cycle Environmental Assessment contact Mr. Jeff Klein, Assistant Product Manager (810) 574–6217.

SUPPLEMENTARY INFORMATION:

a. Proposed Action: This LCEA examines the potential impacts to the natural and human environment from the procurement of the DEUCE to satisfy the Army's need for a high-speed earthmoving capability, which can deploy with Light and Airborne units. The DEUCE will have earthmoving capabilities comparable to the D5B dozer, the ability to travel at 30 MPH, and be C–130 air transportable. The DEUCE is designed to improve the Army's ability to deploy with supported units, and provide mobility, countermobility, and survivability tasks as required. A minimum quantity of 67 bulldozers is required to fill the Army's Force Package One contingency requirements.

The DEUCE will replace existing D5B dozers in selected units. The current earthmoving system does not meet the changing Army role to become a Rapid Power Projection type force.

b. Environmental Impacts: The DEUCE life-cycle includes the transport of vehicles to test sites, testing, vehicle production, deployment and operation of production vehicles and their eventual demilitarization. Potential environmental impacts of these life-cycle stages may include Air Quality, Noise, Water, Soil and Groundwater, Hazardous Materials and Hazardous Wastes, and Flora, Fauna and Threatened or Endangered Species at each of these life-cycle phases.

c. Additional Findings: Impacts from the proposed action would be minimal and not significant for the following reasons:

(1) The DEUCE will be used in its intended environment. This intended environment includes vehicle production and some testing at the Contractor's facility, and the remainder of life-cycle activities at Army installations and facilities.

(2) The DEUCE is very similar to vehicles produced commercially and vehicles already in the Army inventory. It is being produced in low to moderate quantities and will not significantly increase the vehicle population at Army installations and facilities.

(3) The overall environmental risk associated with the DEUCE is low. It does not introduce any new technologies or processes. Vehicle life cycle activities do not introduce any potential environmental impacts that are not already currently mitigated by Army policy and procedures.

(4) The DEUCE Product Manager has ensured that the Contractor producing the vehicle is environmentally complaint, has no permit violations, and has commercial practices for Hazardous Material Management and Pollution Prevention in production of the DEUCE.

(5) The DEUCE Product Manager recognizes that Army installations and facilities have environmental plans and measures in place to address vehicle life cycle activities very similar to that of the DEUCE to prevent, mitigate and remediate environmental damage caused by vehicle operation. Vehicle operations at these Army installations and facilities are in conjunction with normal activities that are already addressed in their site specific environmental impact statements.

d. Determination: It is therefore concluded that this program:

(1) Is not a major federal action significantly affecting the quality of human environment.

(2) Will not have a significant impact on the environment.

(3) Is not likely to be environmentally controversial.

(4) Will not likely result in litigation based on environmental quality issues.

(5) Does not require an Environmental Impact Statement (EIS).

Harry W. McClellan, Jr.,

Product Manager, Construction Equipment/ Materials Handling Equipment.

[FR Doc. 97–22011 Filed 8–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Army is proposing to alter two existing systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alterations consist of adding a routine use to each system of records.

DATES: This proposed action will be effective without further notice on September 19, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Army Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army 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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 7, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs,

and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427). The specific changes to the record systems being altered are set forth below followed by the notices, as altered, published in their entirety.

Dated: August 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0702.23

SYSTEM NAME:

Dishonored Check Files *(August 9, 1996, 61 FR 41586).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To a private contractor for the purpose of collection services to recover moneys owed to the U.S. Government.'

* * * * *

AAFES 0702.23

SYSTEM NAME:

Dishonored Check Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

Army and Air Force Exchange Service-Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378–5163; and

Post and base exchanges within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have negotiated dishonored checks at Army and Air Force Exchange Service (AAFES) facilities and whose check cashing privilege is under review by the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, indebtedness, collection efforts, and relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Federal Claims Collection Act of 1966 (Pub L. 89-508), as amended; Debt Collection Act of 1982 (Pub L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104-134, section 31001); Army Regulation 215-5, Nonappropriated Funds Accounting Policy and Reporting Procedures; AR 60-20/AFR 147-14, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To collect dishonored check indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a private contractor for the purpose of collection services to recover moneys owed to the U.S. Government.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

By surname and Social Security Number of the individual responsible for dishonored check.

SAFEGUARDS:

Records are maintained in buildings having security guard and are accessed only by personnel having official need therefor who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are retained by the Office of the General Counsel until indebtedness has been satisfied, determined to be uncollectible, or additional administrative action is required. Upon completion, records are transferred to the Accounts Receivable Division (FA-O/R) and maintained with appropriate check cashing privilege records and destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number, latest correspondence from AAFES if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number, latest correspondence from AAFES if available, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her employer, law enforcement investigative

agencies, banking facilities, consumer reporting agencies, and sources that furnish information regarding individual's credit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0702.34

SYSTEM NAME:

Accounts Receivable Files *(August 9, 1996, 61 FR 41587).*

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To the Department of the Treasury, Financial Management Service, for the purpose of collecting delinquent debts owed to the U.S. Government via administrative offset.'

* * * * *

AAFES 0702.34

SYSTEM NAME:

Accounts Receivable Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

Army and Air Force Exchange Service-Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378–5163; and

Post and base exchanges within the Army and Air Force Exchange Service (AAFES) system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service customers (military, retirees, civilian, and civilian dependents).

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files relating to debts owed by individuals, including dishonored checks, deferred payment plans, home layaway, salary/travel advances, pecuniary liability claims and credit cards. These files include all correspondence to the debtor/his or her commander, notices from banks concerning indebtedness, originals or copies of returned checks, envelopes showing attempts to contact the debtor, payment documentation, pay adjustment authorizations, deferred payment plan applications, charges and statements or accounts, and home layaway cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Federal Claims Collection Act of 1966 (Pub.L. 89-508, as amended); Debt Collection Act of 1982 (Pub.L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104-134, section 31001); Army Regulation 215 5, Nonappropriated Funds Accounting Policy and Reporting Procedures; AR 60-20/AFR 147-14, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To process, monitor, and post audit accounts receivable, to administer the Federal Claims Collection Act, and to answer inquiries pertaining thereto.

To collect indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of the debt claim.

To the Internal Revenue Service (IRS) to obtain locator status for delinquent accounts receivables (controls exist to preclude redisclosure of solicited IRS address data; and/or to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age).

To private collection agencies for collection action when the internal collection efforts have been exhausted.

To the Department of the Treasury, Financial Management Service, for the purpose of collecting delinquent debts owed to the U.S. Government via administrative offset.

The 'Blanket Routine Uses' that appear at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Retrieved by customer's surname or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only by authorized personnel within AAFES-FA-O/R.

RETENTION AND DISPOSAL:

Records are retained in current files until close of fiscal year in which receivable is cleared. At year end, files are stored for 10 years and subsequently destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Accounts Receivable Division, Comptroller Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, Social Security Number, or other acceptable identifying information that will facilitate locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Accounts Receivable

Division, Comptroller Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, Social Security Number, or other acceptable identifying information that will facilitate locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the customer and from correspondence between AAFES and Vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–21973 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Alter a record system.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes are required as a result of action by the Bureau of Alcohol, Tobacco, and Firearms amending its regulation which further clarifies those categories of individuals who are prohibited from receiving or possessing firearms under the Brady Handgun Violence Prevention Act (Pub.L. 103–159). The clarification permits further identification of those individuals who are to be included in the record system being altered.

DATES: The alteration will be effective without further notice on September 19, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records 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 specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety. The changes are required as a result of action by the Bureau of Alcohol, Tobacco, and Firearms amending its regulation which further clarifies those categories of individuals who are prohibited from receiving or possessing firearms under the Brady Handgun Violence Prevention Act (Pub.L. 103–159). The clarification permits further identification of those individuals who are to be included in the record system being altered.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on August 7, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 20, 1996 (61 FR 6427).

Dated: August 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS) *(December 20, 1996, 61 FR 67322).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete last paragraph and replace with 'Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (Note: includes both current and former members who recently have been convicted by a courts-martial, given nonjudicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (Note: includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); or have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial.'

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S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS).

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses punishable under the Uniform Code of Military Justice.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law; attempting or committing suicide; or whose dependent resides in the same household and is the victim of Sudden Infant Death Syndrome (SIDS).

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are punishable under the Uniform Code of Military Justice.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one

year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (Note: includes both current and former members who recently have been convicted by a courts-martial, given nonjudicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (Note: includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); or have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled by law enforcement authorities (e.g., Defense Protective Service, military and civilian police, military criminal investigation services or commands); DoD organizations and military commands; Legal and judicial authority (e.g., Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (e.g., the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (e.g., Social Security Number, date of birth, etc.), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

PURPOSE(S):

To provide a single central facility within the Department of Defense (DoD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance DoD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) only as follows:

To the Department of Justice:

(1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies.

(2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufactures or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices *do not* apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, incident number, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center: Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location: Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAV, 8725 John J. Kingman Road,

Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services (includes the U.S. Coast Guard) and Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–21974 Filed 8–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 20, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 14, 1997.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Lists of Hearing Officers and Mediators.

Frequency: On occasion.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,658.

Burden Hours: 3,050.

Abstract: Under Part B of the Individuals with Disabilities Education Act, each local educational agency receiving Part B funds must keep a list of persons who serve as hearing officers. The State keeps a list of mediators. The list serves to provide interested parties with information about mediator's and hearing officer's qualifications.

[FR Doc. 97–21977 Filed 8–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 19, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 14, 1997.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Title: Graduate Assistance in Areas of National Need (GAANN) Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 325.

Burden Hours: 13,432.

Abstract: These instructions and forms provide the U.S. Department of Education the information needed to make awards to academic departments and to sustain and enhance the capacity for teaching and research in areas of national need.

[FR Doc. 97–21978 Filed 8–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR97–11–000]

State of Alaska v. Phillips Alaska Pipeline Corporation; Notice of Complaint

August 14, 1997.

Take notice that on August 12, 1997, pursuant to sections 9, 13(1), and 15(1) of the Interstate Commerce Act, the State of Alaska filed a complaint against Phillips Alaska Pipeline Corporation and its FERC No. 34 tariff. The State of Alaska also filed an untimely protest to FERC No. 34 that has been rejected.

The State of Alaska raises issues challenging Phillips Alaska's FERC No. 34, filed July 30, 1997, and effective August 1, 1997. Alaska contends, as it did in opposing the Trans Alaska Pipeline System (TAPS) Carrier's mid-year tariffs that were accepted and suspended by order issued July 18, 1997 [80 FERC ¶ 61,083 (1997)], that the rates in Phillips Alaska's FERC No. 34 (1) are the product of the TAPS Carrier's unlawful pooling agreements, namely the TAPS Operating Agreements, the DRA Agreement, and the Capacity Settlement Agreement, and (2) improperly include costs to defend and settle the Exxon Valdez oil spill litigation and the accrued cost of post-employment benefits other than pensions (PBOPs).

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 211). All such motions or protests should be filed on or before August 29, 1997. 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. Answers to this complaint shall be due on or before August 29, 1997.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21993 Filed 8–19–97; 8:45 am]

BILLING CODE 6716–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–689–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

August 14, 1997.

Take notice that on August 8, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97-689-000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to abandon and replace a 3-inch orifice meter with a 2-inch positive displacement meter at its existing Merrill Meter Station in Lincoln County, Wisconsin, under ANR's blanket certificate issued in Docket No. CP82–480–000, 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.

ANR states that it delivers natural gas to Wisconsin Public Service Corporation (WPSC) at the existing Merrill Meter Station, which currently consists of two 3-inch orifice meters. ANR states that with the proposed abandonment and replacement of the facilities, this station will then consist of one 2-inch positive displacement meter and one 3-inch orifice meter. ANR states that it will be fully reimbursed by WPSC for its cost of the replacement of the facilities at the Merrill Meter Station.

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 Section 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21987 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4024–000]

British Columbia Power Exchange Corporation; Notice of Filing

August 14, 1997.

Take notice that on July 31, 1997, the British Columbia Power Exchange Corporation (Powerex) petitioned the Commission for acceptance of Powerex FERC Rate Schedule 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.

Powerex intends to engage in wholesale electric power and energy purchases and sales as a marketer. Powerex is not in the business of generating or transmitting electric power. Powerex is an affiliate of the British Columbia Hydro and Power Authority, an integrated electric utility serving customers in British Columbia, Canada.

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, 888 First 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 protest should be filed on or before August 27, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21990 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–438–000]

CNG Transmission Corporation; Notice of Section 4 Filing

August 14, 1997.

Take notice that on May 5, 1995, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service on line H–21754 which line is located in McDowell County, West Virginia.

CNG states that it will abandon line H–21754 by sale to Classic Oil & Gas Resources, Inc. CNG further states that no contract for transportation service with CNG will be canceled or terminated as a result of the proposed abandonment of service.

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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21999 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–439–000]

CNG Transmission Corporation; Notice of Section 4 Filing

August 14, 1997.

Take notice that on May 5, 1995, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service on line H–169 which line is located in Kanawha County, West Virginia.

CNG states that it will abandon H–169 by sale to Eastern States Oil & Gas, Inc. CNG further states that no contract for transportation service with CNG will be canceled or terminated as a result of the proposed abandonment of service.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–22000 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3838–000]

Duquesne Light Company; Notice of Filing

August 14, 1997.

Take notice that on July 24, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated July 8, 1997 with NorAm Energy Services, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds NorAm Energy Services, Inc. as a customer under the Tariff. DLC requests an effective date of July 8, 1997 for the Service Agreement.

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, 888 First Street, NE., 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 26, 1997. 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 party 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21989 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–692–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

August 14, 1997.

Take notice that on August 11, 1997, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–692–000 a request pursuant to Sections 157.205 and 157.212 of Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point, located in Hutchinson County, Texas, to permit the firm transportation and delivery of natural gas to Southern Union Gas Company (Southern Union), under El Paso's certificate issued in Docket No. CP82–435–000, pursuant to Section 7(c) 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.

El Paso proposes to construct and operate the Buena Vista Meter Station, consisting of two 2-inch tap and valve assemblies, one 1-inch O.D. Daniels mini-turbine, all with appurtenances, to be located in Section 25, Arnold & Barrett, Block Y, Hutchinson County, Texas. El Paso states the proposed quantity of natural gas to be transported on a firm basis to the Buena Vista Meter Station is estimated to be 165,345 Mcf annually, or an average of 453 Mcf per

day. El Paso asserts that it has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to El Paso's other customers. El Paso declares the gas will be used by Southern Union to satisfy the residential and residential space heating requirements of its customers in the area.

El Paso states that Southern Union will reimburse them for the costs related to the construction of the proposed delivery point, estimated to be $45,200, including respective overhead and contingency fees.

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 Section 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21988 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–392–001]

National Fuel Gas Supply Corporation; Notice of Proposed Changes to FERC Gas Tariff

August 14, 1997.

Take notice that on August 11, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, and Fourth Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to be effective October 31, 1997.

National Fuel states that the purpose of the filing is to add provisions to the General Terms and Conditions and to the ESS, FSS and ISS Rate Schedules to allow Shippers under those Rate Schedules to transfer Storage Balance to each other, under the conditions described therein, including payment by the Receiving Shipper and Transferring Shipper of administrative charge equal to a posted rate between a maximum of $94.1048 per Customer Nomination and a minimum rate of zero.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21997 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–429–001]

Ozark Gas Transmission System; Notice of Amendment to Tariff Filing

August 14, 1997.

Take notice that on August 11, 1997, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 141 and Original Sheet No. 141A, to become effective September 15, 1997. Ozark submitted these sheets as part of a filing amending a July 25, 1997 filing submitted in the above captioned docket.

Ozark states that the revised tariff sheets implement an open tap policy for deliveries out of its system under Ozark's interruptible transportation service Rate Schedule ITS. Ozark states that it filed on July 25, 1997, proposing this open tap policy for its firm transportation service Rate Schedule FTS and that, as a result of requests from its customers, it is proposing herein to provide a similar policy for its service under Rate Schedule ITS. Ozark states that it will install promptly, metering and interconnection facilities in those instances when new facilities are necessary to accommodate the delivery of gas under its ITS Rate Schedule out of its system for delivery to a Local Distribution Company, municipality, electric utility, Independent Power Producer or direct end user, if the Shipper agrees to reimburse Ozark for the costs incurred for such installation. Ozark also states that it may agree to pay all or a portion of such costs based on whether the facilities will be economically beneficial.

Any person desiring to protest this filing should file a protest with the Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21998 Filed 8–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–000]

Pacific Gas and Electric Company; Notice of Commission Staff Attendance at a Public Workshop on the Sediment Management Plan for the Rock Creek and Cresta Reservoirs

August 14, 1997.

Take notice that staff from the Office of Hydropower Licensing, Division of Licensing and Compliance, will be attending a public workshop in Sacramento, CA from 10:00 a.m. to 3:00 p.m. on Thursday, September 4, 1997. Pacific Gas & Electric Company (PG&E) is conducting the workshop on the Sediment Management Plan for the Rock Creek and Cresta reservoirs in connection with PG&E's Federal Energy Regulatory Commission (FERC) license application for the Rock Creek-Cresta Project. The public workshop will be held at 2740 Gateway Oaks Drive, Sacramento, CA. For further information, please contact Mr. Tom Jereb of PG&E at (415) 973–9320.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21994 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS97–26–000]

Phillips Alaska Pipeline Corporation; Notice Rejecting Protest

August 14, 1997.

On August 12, 1997, the State of Alaska filed a motion for leave to file a protest out of time in the above-docketed proceeding. Under 18 CFR 343.3(a), protests in this proceeding were due on or before July 15, 1997. Pursuant to 18 CFR 375.302(g), the late-filed protest is rejected.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21992 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RS92–86–020, RP92–108–015, and RP92–137–047]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

August 14, 1997.

Take notice that on August 11, 1997, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing with the Federal Energy Regulatory Commission its proposals regarding the redistribution of excess interruptible transportation revenues in the referenced proceedings pertaining to the period November 1, 1993 through August 31, 1995.

[Docket Nos. RS92–86–019, RP92–108–014, RP92–137–045]

On March 3, 1993, Transco submitted an Order No. 636 Compliance Filing and proposed, among others, to refund excess IT revenues to all firm and interruptible shippers. On May 14, 1993, the Commission issued an order directing Transco to revise its tariff to provide for the refund of excess IT revenues to firm shippers only. On rehearing, certain parties argued that both firm and interruptible shippers should share in the refund of excess IT revenues. The Commission denied rehearing, reaffirming its finding that such refunds should only be given to firm shippers. Certain parties appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit. On April 15, 1997, the court granted the Commission's motion to remand this issue for further consideration by the Commission.

On June 12, 1997, the Commission issued an Order on Remand and rescinded the Commission's original finding that only firm shippers are eligible to receive the excess IT revenues and requires that Transco redistribute its excess IT revenues so as to include interruptible shippers who were harmed by the under allocation of costs to interruptible service during November 1, 1993 through August 31, 1995. Additionally, Transco was directed to file to implement the Commission's decision within 60 days of the June 12 Order (i.e., on or before August 11, 1997).

On June 13, 1997, Transco submitted a proposed refund plan regarding certain interruptible transportation revenue related to a Spider Field lateral in Louisiana for the period September 1, 1992 through October 31, 1993 and stated it would submit its refund plan for the period November 1, 1993 through August 31, 1995 as part of the instant filing.

Transco states that it is serving copies of the instant filing on the parties listed on the official service list for the relevant proceedings, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–22003 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–688–000]

Viking Gas Transmission Company; Notice of Request Under Blanket Authorization

August 14, 1997.

Take notice that on August 8, 1997, Viking Gas Transmission Company (Viking), 825 Rice Street, St. Paul, Minnesota 55117, filed in Docket No. CP97–688–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205 and 157.212) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Todd County, Minnesota, for Part 284 transportation services by Viking, under Viking's blanket certificate issued in Docket No. CP82–414–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking proposes to construct and operate a 2-inch hot tap, 0.5 mile of 2-inch lateral line, measurement and data acquisition equipment, and appurtenant facilities to serve the municipal utilities of Clarissa and Eagle Bend, Minnesota (Cities), under Viking's firm and interruptible rate schedules. It is stated that Viking will be fully reimbursed for the $142,600 cost of installing the tap by the Cities. It is explained that the delivery point will have a capacity of 2,208 dt equivalent of gas per day. It is further explained that the Cities have arranged with Northern States Power Company (Minnesota) to act as their gas supply agent. It is asserted that the volume of gas delivered to the Cities will be incremental, as no quantities are presently authorized, and that it will have no impact on Viking's peak day or annual deliveries. It is explained that the proposal is not prohibited by Viking's existing tariff and that Viking has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

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 Section 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21986 Filed 8–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–401–001]

Viking Gas Transmission Company; Notice of Filing of Refund Report

August 14, 1997.

Take notice that on August 11, 1997, Viking Gas Transmission Company (Viking) tendered for filing an amended refund report labeled 1996 Expansion (Docket No. CP96–32–000) Contract Demand Revenue Adjustments Docket No. RP97–401–000 that details refunds Viking made to its Rate Schedule FT–B expansion customers. The purpose of this filing is to comply with the Letter Order issued on July 25, 1997 in Docket No. RP97–401–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before August 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–22002 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. FA95–26–001 and FA95–27–001]

Western Resources, Inc.; Notice of Filing

August 14, 1997.

Take notice that on June 9, 1997, Western Resources, Inc., tendered for filing its refund report 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, 888 First 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 20, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21991 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–62–006]

Wyoming Interstate Company; Notice of Compliance Filing

August 14, 1997.

Take notice that on August 11, 1997, Wyoming Interstate Company (WIC), tendered for filing to become part of its FERC gas Tariff, Second Revised Volume No. 2, Substitute First Revised Sheet No. 36C, to be effective August 1, 1997.

WIC states the tariff sheet is being filed in compliance with the order issued July 24, 1997 in Docket No. RP97–62–005, as well as Section 154.203 of the Commission's regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21996 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2069–003, Arizona]

Arizona Public Service Company; Notice of Availability of Draft Environmental Assessment

August 14, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for relicense for the major, constructed Childs Irving Hydroelectric Project. The project is located on Fossil Creek, in Yavapai and Gila counties, Arizona. The Commission staff has prepared a Draft Environmental Assessment (DEA) on the project. The DEA contains the staff's analysis of the environmental impacts of the project and has concluded that relicensing the project, with appropriate environmental enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Dianne Rodman, Environmental Coordinator, at (202) 219–2830.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–21995 Filed 8–19–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5878–1]

Agency Information Collection Activities

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 EPA is planning to submit the following

proposed and/or continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB): Municipal Incinerators, NSPS Subpart E, ICR Number 1058, OMB Control Number 2060–0040; Stationary Gas Turbines, NSPS Supbart GG, ICR Number 1071, OMB Control Number 2060–0028; nd Benzene Equipment Leaks, NESHAP subpart V, ICR Number 1153, OMB Control Number 2060–0068. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 20, 1997.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance. People interested in getting copies of this ICR or making comments about the ICR should direct inquiries or comments to the Office of Compliance, Mail Code 2224A, 401 M Street, SW., Washington, DC 20460. Information may also be acquired electronically through the Enviroene Bulletin Board, (703) 908–2092 or the Enviroene WWW/Internet Address, http// wastenot.inel.gov./envirosense/. Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: Joyce Chandler, (202) 564–7073, facsimile number (202) 564–0037, E-Mail: chandler.joyce@epamail.epa.gov for NSPS Subpart E; Jordan Spooner, (202) 564–7058, facsimile number (202) 564–0050, E-mail: spooner.jordan@epamail.epa.gov for NSPS Subpart GG; and Rafael Sánchez, (202) 564–7028, facsimile number (202) 564–0050, E-Mail: sanchez.rafael@epamail.epa.gov for NESHAP Subpart V.

SUPPLEMENTARY INFORMATION:

NSPS (Subpart E) for Municipal Incinerators

Affected entities: Entities potentially affected by this action are those which are subject to the New Source Performance Standards (NSPS) for Incinerators Subpart E. The NSPS Subpart E standards of 40 CFR 60.50 apply to each incinerator with a charging rate of more than 45 metric tons per day (50 tons per day), which commenced construction, reconstruction, or modification after August 17, 1991 and before the proposal date of NSPS Subpart Eb. For Subpart E an incinerator is defined as any furnace burning solid waste (refuse, more than 50 percent of which is municipal type waste) to reduce the volume of waste by removing combustible matter. The Subpart Ea standards of CFR part 60 apply to municipal incinerators with a capacity greater than 225 megagrams per day (250 ton/day) of municipal solid waste or refuse-derived fuel, for which construction, modification, or reconstruction commenced between March 20, 1989 and September 20, 1994. Large municipal waste combustors that are constructed, modified, or reconstructed after September 20, 1994 are subject to NSPS Subpart Eb.

Title: NSPS Subpart E: New Source Performance Standards (NSPS) for Municipal Incinerators Subpart E, OMB number 2060.0040, expires March 31, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 60, Subpart E, New Source Performance Standards for Incinerators. In the Administrator's judgement, the particulate matter (PM) emissions cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111.

Owners or operators of units subject to Subpart E must provide EPA, or the delegated State regulatory authority, with the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operation change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. The recordkeeping requirements for incinerators consist of the occurrence and duration of any startup and malfunctions in the operation of an affected facility, and measurements of PM emissions. The recordkeeping requirements include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including conversion factors and measurements of PM emissions. Owners or operators must also maintain records of daily charging rate and hours of operation. Records of startup, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. These notifications, reports and records are required, in general, of all sources subject to NSPS. The notification and reports enable EPA or the delegated State regulatory authority to determine that the proper technology is installed and properly operated and maintained and to schedule inspections. This information notifies the Agency when a source becomes subject to the regulations and informs the Agency of the sources's compliance status when it begins operation. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved.

The EPA is charged under section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources. The standards must reflect application of the best technological system of continuous emission reductions. Such reductions should take into consideration the cost of achieving emission reduction, or any non-air quality health and environmental impact and energy requirements.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who

are to respond, including the use of appropriate automated electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 8,277 person-hours. Respondents costs generally can be calculated on the basis of $14.50 per hour, plus 110 percent overhead. The average annual burden to the industry over the next three years of the ICR is estimated to be $252,035. This is based on an estimated 93 respondents, with no new incinerators subject to Subpart E in the next three years of the ICR. New municipal incinerators capable of combusting more than 225 megagrams per day where construction is commenced after September 20, 1994, or reconstruction or modification is commenced after June 19, 1996, will be subject to NSPS subpart Eb.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart GG: Stationary Gas Turbines

Affected entities: Entities potentially affected by this action are those stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, based on the lower heating value of the fuel fired. Any facilities using stationary gas turbines which commence construction, modification, or reconstruction after October 3, 1977 are also potentially affected.

There are several exceptions to the standard. One exception includes those turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (10 million Btu/hr) but less than or equal to 107.2 gigajoules per hour (100 million Btu/hour) based on the lower heating value of the fuel fired, and that have commenced construction prior to October 3, 1982. Another exception includes those turbines with a heat input at peak load greater than 107.2 gigajoules per hour that commenced construction, modification, or reconstruction between the dates of October 3, 1977, and January 27, 1982, except for electric utility gas turbines. Additional exemptions are specified in detail at 40 CFR 60.332, Standard for Nitrogen Oxides.

Title: NSPS for Stationary Gas Turbines, OMB number 2060–0028, expires January 31, 1998.

Abstract: The New Source Performance Standards (NSPS) for stationary gas turbines (GG) were promulgated on September 10, 1979 to regulate the emissions of Nitrogen Oxide (NO_X) and Sulfur Dioxide (SO_2) into the ambient air supply. The EPA is charged under section 111 of the Clean Air Act of 1990, as amended, to establish these standards for new stationary sources that reflect application of the best demonstrated technology. In addition, section 114(a) of the Clean Air Act provides for monitoring, recordkeeping, and reporting requirements for these standards.

Owners or operators of affected facilities must make one-time-only reports which include the following notifications: date of construction/reconstruction; anticipated and actual dates of start-up; any physical or operational change which may increase the SO_X or NO_X emission rates; commencement date for the continuous monitoring system performance demonstration; and date and results of the initial performance test. Plant owners or operators must also provide semi-annual reports of excess emissions, as promulgated in the December 13, 1990 **Federal Register**, 55 FR 51378.

Owners or operators must maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in operations, or any periods during which the monitoring system is inoperative. Recordkeeping is also required to document process information regarding the: sulfur and nitrogen content of the fuel; fuel:water ratio; rate of fuel consumption; and ambient conditions. This latter recordkeeping function involves daily measurements from the continuous monitoring system to monitor ambient conditions, and to record the fuel consumption and the ratio of water to fuel being fired in the turbine only for plants which use water or steam injection to control NO_X emissions. There is generally no additional burden on the owner/operator to provide this information because adequate recordkeeping is required of plant operations.

It is important to note that if these data and reports are not collected, the Agency has no means for ensuring that compliance with the standards is being achieved and/or maintained by the new, modified, or reconstructed sources which are subject to regulation. In the absence of information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, or the inability to ensure compliance with the standards. In addition to the purposes mentioned above, this kind of information is used for targeting plants for inspections and as evidence when compliance cases are taken to court.

It is also important to note that an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. Any information submitted to the Agency for which a claim of confidentiality is requested will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B: Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 76,681.25 person-hours. This is based on an estimated 550 sources currently subject to the standard, and an additional 50 sources per year over the next three years. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart V: Benzene for Equipment Leaks (Fugitive Emission Sources)

Affected entities: Entities affected by this action are those owners or operators of process units operating in volatile hazardous air pollutant (VHAP) service (those containing or contacting fluids (liquid or gas) consisting by weight of at least 10 percent VHAP).

Title: NESHAP for Equipment Leaks (Fugitive Emission Sources), OMB number 2060–0068, expires March 31, 1998.

Abstract: The standards apply to fugitive emissions from equipment sources operating in VHAP service (containing or contacting fluids with at least 10 percent VHAP by weight). More specifically, it applies to each of the following sources that are intended to operate in VHAP service: pumps; compressors; pressure relief devices; sampling connection systems; open-ended valves or lines; valves, flanges and other connectors; product accumulator vessels; and control devices or systems that contain or contact fluids (liquid or gas) consisting by weight of at least 10 percent VHAP.

Owners or operators of the affected process units must make the following one-time-only reports: application for approval of construction or modification; notification of startup; application of waiver of testing (if desired by source); application for equivalency (if desired by source); and an initial report, which is to include a list of the equipment installed for compliance, a description of the physical and functional characteristics of each piece of equipment, a description of the methods which have been incorporated into the standard operating procedures for measuring or calculating emissions, and a statement that the equipment and procedures are in place and are being used.

Owners or operators are also required to submit semiannual reports of the number of valves, pumps, and compressors for which leaks were detected, and explanations for any leak repair delays.

Generally, the one-time-only reports are required of all sources subject to the NESHAP. However, the recordkeeping and other reporting requirements are specific to the provisions of Subpart V (Equipment Leaks Standards). To fulfill the recordkeeping requirement, affected process units must be monitored to detect leaks by Method 21 of Appendix A of 40 CFR part 60. The recordkeeping requirements of § 61.246 apply to leaks detected from pumps, compressors, valves, flanges, and pressure relief devices. Pumps are checked visually each calendar week, and pertinent information on each unit is recorded in a log, required in § 61.246(e). Compressor sensors are checked daily, and valves are monitored monthly. Recordkeeping requirements for these units are in effect only when a leak is detected (§§ 61.242–3, 242–7). Action taken to repair leaks must also be recorded and kept on file in a readily accessible location.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The majority of industry costs associated with the information collection activity in the standards are labor costs. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The current average annual burden to industry over the next three years is estimated to be $716,762. The current annual burden to industry over the next three years from these reporting and recordkeeping requirements is estimated to be 23,539 person-hours. The estimated number of likely respondents within the term of this ICR is 200. The estimated average burden hours per response is 30.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 8, 1997.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 97–22070 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5878–5]

Brownfields Showcase Communities

AGENCY: Environmental Protection Agency.

ACTION: Solicitation of statements of interest from communities interested in being designated as Brownfields Showcase Communities.

SUMMARY: Participating Agencies Programs within the following Federal agencies are participating in the selection and implementation of the Brownfields Showcase Communities: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of Transportation,

Department of the Treasury, Department of Veterans Affairs, General Services Administration, Small Business Administration.

Background

Brownfields are abandoned, idled or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived contamination. The Brownfields Initiative was launched to empower States, local governments, and other stakeholders in economic redevelopment to work together to assess, clean up, and sustainably reuse brownfields. Communities have asked for more interaction among all levels of government, the private sector, and non-governmental organizations. In response, Federal agencies have joined together to strengthen and improve their collaborative efforts to clean up and reuse contaminated property.

A partnership of Federal agencies with interests in brownfields redevelopment has been formed that will offer special technical, financial and other assistance to selected communities. These communities will be called Brownfields Showcases Communities and will be models demonstrating the benefits of focused attention on brownfields. The Federal partners plan to designate ten Brownfields Showcase Communities, distributed across the country, varying by size, resources and community character. The Brownfields Showcase Communities project will be the centerpiece of the Brownfields Initiative and will provide a pattern for future efforts.

Goals

The goals of the Brownfields Showcase Communities project are to:

- Promote environmental protection and restoration, economic redevelopment, job creation, community revitalization, and public health protection, through the assessment, cleanup, and sustainable reuse of brownfields;
- Link Federal, State, local and non-governmental action supporting community efforts to restore and reuse brownfields; and
- Develop national models demonstrating the positive results of public and private collaboration in addressing brownfields challenges.

Benefits

A community will receive the following benefits from being designated as a Brownfields Showcase Community.

- National visibility for a community's brownfields efforts;
- Coordinated delivery of technical and financial support from participating Federal agencies. Participating agencies and programs will vary for each Showcase Community depending upon the particular Showcase's needs and plans. For example, an urban Showcase Community might be served by different programs and resources than a rural community;
- Financial assistance, grants and cooperative agreements from participating agency programs subject to the requirements of those programs; and
- Staff support in the form of a Federal employee assigned to each Showcase Community to assist with coordination and implementation activities.

Structure of the Statement of Interest

To be considered for selection as a Brownfields Showcase Community, interested communities should submit a statement of interest that includes the following information:

- Proposal title;
- Location: city, county, and state of the Showcase area;
- Applicant identification: the name of the project director of the Showcase project;
- Contact Name/Title/Organization;
- Contact Phone/Fax/E-Mail;
- Name and contact information of the representative of the appropriate governmental subdivision (Mayor, County Executive, Tribal President) if different from the project director;
- Date submitted: the date when the proposal is postmarked or sent to EPA via registered or tracked mail;
- Proposal Overview: explain how designation as a Brownfields Showcase Community will help the community meet its objectives and will advance the Brownfields Showcase Community goals; and
- Related Designations: identify whether the applicant or the area for the proposed Showcase Community project is designated as a Federal or State Brownfields pilot, a Federal or State Empowerment Zone, Enterprise Community or other special economic area.

Statements of Interest are limited to two pages. Supplemental materials such as appendices, maps, records, etc., will not be considered during the initial screening phase of the selection process. All communities, or regional groupings of communities, are eligible for consideration as a Brownfields Showcase Community. Previous designation as an EPA brownfields pilot is not a requirement for consideration, nor are such communities precluded from applying. Statements of Interest will be accepted from any party, but must be submitted in partnership with a governmental entity to be eligible for consideration.

Selection Process

Selection of the Brownfields Showcase Communities will be done in two phases. During Phase I, interested communities are invited to submit two-page Statements of Interest which describe how the community's designation as a Showcase Community will advance the goals of the Showcase Communities project as described above. For example:

- A community with well-defined brownfields problems that can be addressed effectively through environmental cleanup and sustainable reuse is more likely to be considered as a candidate community than a community that suspects that there are brownfields problems in their jurisdiction that may require attention;
- A community with an established network of working relationships among Federal, State, and local governments, and other public and private stakeholders is more likely to be considered as a candidate community than a community which is just beginning to create these types of relationships;
- A community that has begun preliminary work such as cleanup and redevelopment planning, securing private investors, and exploring public financial opportunities is more likely to be considered as a candidate community than a community that has just started to address its brownfields issues. Within two years after designation, a Brownfields Showcase Community should be able to demonstrate success in dealing with cleanup and reuse issues.

The Showcase Communities Selection Board, which represents the participating Federal agencies, will evaluate the Statements of Interest. It will screen the applications to create a list of 30 to 40 candidate communities which will then be invited to move into Phase II of the selection process.

During Phase II, the 30 to 40 candidate communities will be invited to submit ten-page proposals which more fully describe their brownfields efforts. At that stage, communities will be encouraged to submit supporting materials which demonstrate the breadth of support for their application within the community. The Showcase Communities Selection Board will then evaluate and select the ten Brownfields

Showcase Communities, using the detailed criteria listed below.

1. Brownfields Potential: Describe the brownfields that exist, or are perceived to exist, in the community and that have reasonable potential for environmental restoration and economic reuse in the near-term.

2. Community Need: Describe how this is an area which has social and economic conditions which would benefit from Federal assistance for brownfields cleanup and redevelopment.

3. Local Commitment: Describe the degree of local commitment to brownfields cleanup and redevelopment including existing community efforts and investment of community resources.

4. Federal, State, and Local Partnerships: Describe the Federal, State, and local agencies and organizations participating in the community's brownfields activities, including other programs and funds available for brownfields activities.

5. Strategic Planning: Describe the extent to which the brownfields strategy is part of a larger redevelopment strategy that will link brownfields cleanup to economic redevelopment strategies, job creation, increased environmental protection, and sustainability.

6. Management Capability: Describe prior experience or knowledge in managing similar redevelopment, cleanup, and community participation activities. Also describe what specific planning and programmatic requirements have been met for Federal financing programs anticipated for use.

7. Environmental Justice: Describe the extent to which low-income, minority, and other disadvantaged communities will participate in the development of community brownfields redevelopment plans.

8. National Replicability: Describe how the community will serve as a model for other similarly situated communities in addressing brownfields redevelopment.

Communities that are invited to submit Phase II proposals should respond directly to these criteria in their proposals. Further application requirements and guidelines will be provided to the candidate communities to assist them in preparing their application. Note that in Phase I (the initial Statement of Interest) of the selection process, interested communities should consider the detailed criteria, but do not have to respond to each criterion.

DATES: Submit Statements of Interest on or before September 19, 1997. All proposals must be postmarked or sent to EPA via registered or tracked mail by the deadline cited above.

ADDRESSES: Address Statements of Interest to Gayle Rice or Sven-Erik Kaiser, U.S. EPA (5101), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gayle Rice, 202–260–8431 or Sven-Erik Kaiser, 202–260–5138.

SUPPLEMENTARY INFORMATION: Additional information, if any, will be updated on the Internet Worldwide Web at the Universal Resource Location address of ''http://www.epa.gov/brownfields.'' Persons lacking Internet access can communicate with the contact persons listed above.

Dated: August 14, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 97–22071 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5878–2]

Determination of the Waste Isolation Pilot Plant's Compliance With Applicable Federal Environmental Laws for the Period October 1994–1996

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has determined that, for the period October 1994 to October 1996, the Waste Isolation Pilot Plant (WIPP), which is operated by the U.S. Department of Energy (DOE), was in compliance with the pertinent Federal statutes and regulations designated in section 9(a)(1) of the 1992 Land Withdrawal Act, as amended. The Secretary of Energy was notified of the determination via letter from EPA Administrator Carol M. Browner dated August 14, 1997.

This determination was made under the authority of Section 9 of the amended WIPP Land Withdrawal Act. (Pub. L. Nos. 102–579 and 104–201.) Section 9 requires the Administrator of EPA to determine on a biennial basis, following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with EPA's standards for the management and storage of radioactive waste (40 CFR part 191, subpart A), the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and all other applicable Federal laws protecting public health and safety or the environment. This determination applies to WIPP's compliance with these laws during the period October 1994 to October 1996.

This determination is not directly related to, nor is it a part of, EPA's certification decision regarding whether the WIPP complies with the disposal standards for transuranic radioactive waste (40 CFR part 191). The certification decision will be accomplished through a separate rulemaking pursuant to the standards and procedures mandated by section 553 of the Administrative Procedure Act, and in accordance with EPA's WIPP compliance certification criteria regulations at 40 CFR part 194. (61 FR 58499, November 15, 1996.)

FOR FURTHER INFORMATION CONTACT: Scott Monroe; telephone number: 202–233–9310; address: Radiation Protection Division, Mail Code 6602J, U.S. Environmental Protection Agency, Washington, DC 20460.

Dated: August 14, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–22072 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5878–3]

Determination of the Waste Isolation Pilot Plant's Compliance With Applicable Federal Environmental Laws for the Period October 1992–1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has determined that, for the period October 1992 to October 1994, the Waste Isolation Pilot Plant (WIPP), which is operated by the U.S. Department of Energy (DOE), was in compliance with the Federal statutes and regulations designated in subparagraphs (A), (B), (D), (E), (F), and, in pertinent part, (H) of Section 9(a)(1) of the 1992 Land Withdrawal Act (LWA), as amended. To the extent that DOE has not provided EPA with documentation attesting to compliance with DOE orders, notices, and directives pertaining to public health, safety, and the environment for that period, EPA cannot determine DOE's compliance with respect to Section 9(a)(1)(G) and, in

pertinent part, (H) of the LWA. The Secretary of Energy was notified of the determination via letter from EPA Administrator Carol M. Browner dated August 14, 1997.

This determination was made under the authority of Section 9 of the amended WIPP Land Withdrawal Act. (Pub. L. Nos. 102–579 and 104–201.) Section 9 requires the Administrator of EPA to determine on a biennial basis, following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with EPA's standards for the management and storage of radioactive waste (40 CFR part 191, subpart A), the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and all other applicable Federal laws protecting public health and safety or the environment. This determination applies to WIPP's compliance with these laws during the period October 1992 to October 1994.

This determination is not directly related to, nor is it a part of, EPA's certification decision regarding whether the WIPP complies with the disposal standards for transuranic radioactive waste (40 CFR part 191). The certification decision will be accomplished through a separate rulemaking pursuant to the standards and procedures mandated by section 553 of the Administrative Procedure Act, and in accordance with EPA's WIPP compliance certification criteria regulations at 40 CFR part 194. (61 FR 58499, November 15, 1996.)

FOR FURTHER INFORMATION CONTACT: Scott Monroe; telephone number: 202–233–9310; address: Radiation Protection Division, Mail Code 6602J, U.S. Environmental Protection Agency, Washington, DC 20460.

Dated: August 14, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–22073 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50834; FRL–5737–9]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 2800 Crystal Drive, Arlington, VA.

275–EUP–81. Extension. Abbott Laboratories, Dept. 28R, Bldg. A1, 1401 Sheridan Road, North Chicago, Il 60064–4000. This experimental use permit allows the use of 132.3 pounds of the plant growth regulator gibberellic acid on 600 acres of hybrid rice to evaluate its plant growth regulation properties. The program is authorized only in the States of Arkansas, Missouri, and Texas. The experimental use permit is effective from May 19, 1997 to September 1, 1997. (Denise Greenway, CS1 5th floor, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov)

70060–EUP–1. Issuance. Engelharo Corporation, 101 Wood Ave., Iselin, NJ 08830. This experimental use permit allows the use of 273,000 pounds of the biological insecticide kaolin clay on 1,365 acres of apples, apricots, bananas, beans, cane berries, citrus fruits, corn, cotton, cranberries, cucurbits, grapes, melons, nuts, ornamentals, peaches, peanuts, pears, peppers, plums, potatoes, seed crops, small grains, soybeans, strawberries, sugar beets, and tomatoes to evaluate the control of certain insect, fungus, and bacterial damage to plants. The program is authorized in the States of Alabama, Arizona, California, Delaware, Florida, Idaho, Indiana, Georgia, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Tennessee, Virginia, Washington, and West Virginia. The experimental use permit is effective from March 18, 1997 to December 31, 1999. A temporary tolerance exemption for residues of the active ingredient in or on the above-referenced crops has been established. (Sheryl Reilly, CM #2, CS1 5th floor, 703–308–8265, e-mail: reilly.sheryl@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 12, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–22062 Filed 8–19–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011517–002.

Title: APL/Crowley Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., Crowley American Transport, Inc.

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include service between United States ports and points in Puerto Rico, and ports and points in the Caribbean Sea, Mexico, and Central America, and between U.S. Atlantic and Gulf Ports, and inland points via such ports, and ports and points in the Caribbean Sea, Mexico, Central America, and South America. The amendment also revises the number and port rotation of the vessels operated by the parties in the Agreement trade. The parties have requested a shortened review period.

Agreement No.: 207–011586.

Title: Transroll Navegacao, S.A./NPR Holding Co. Joint Venture Agreement.

Parties: Transroll Navegacao, S.A., NPR Holding Corporation.

Synopsis: The proposed Agreement creates a new company, Transroll-

Navieras Express, Inc (d/b/a ''TNX'') that will serve the trade between ports and points in the United States on the one hand, and ports and points in Central America, Caribbean, Brazil, Uruguay, Paraguay and Argentina, on the other hand. The parties have requested a shortened review period.

Dated: August 14, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–21976 Filed 8–19–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0981]

Privacy Act of 1974; Notice of Amendment of System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment of system of records and removal of system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is combining the two systems of records entitled Payroll (BGFRS–7) and Leave (BGFRS–8), and making amendments to include new routine uses, as well as reflect changes due to installation of new computer software. We invite public comment on this publication.

DATES: Comment must be received on or before September 19, 1997.

ADDRESSES: Comments, which should refer to Docket No. R–0981, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Karen A. Appelbaum, Senior Attorney, (202/452–3389), or Elaine M. Boutilier, Senior Counsel, (202/452–2418), Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Combined Systems of Records

The Board recently installed a new software system to handle its payroll, leave and other related personnel data. This software consolidates data previously located in two separate systems of records—Payroll (BGFRS–7) and Leave (BGFRS–8). Accordingly, the Board is amending its Payroll (BGFRS–7) system of records to include leave records, and removing the separate Payroll (BGFRS–8) system of records. The amended system of records will be entitled Payroll and Leave (BGFRS–7).

II. Additions to Routine Uses

Pursuant to the Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Board will disclose data from its Payroll system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. Effective October 10, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 10, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 10, 1998.

The data to be disclosed by the Board to the FPLS include: Name, address, social security number, and quarterly wages. In addition, names and social security numbers submitted by the Board to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the Board to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

In addition to the routine uses being added in connection with the new FPLS program, the Board is adding one other routine use of the payroll and leave data to respond to requests from other federal agencies in connection with hiring or licensing decisions.

III. Compatibility of Proposed Routine Uses

The Board is proposing these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a ''compatible'' use is a use which is necessary and proper. *See* OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data in connection with the FPLS program are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore ''compatible'' uses which meet Privacy Act requirements. The other proposed routine use is a necessary and proper use of the data because it allows another federal agency to make an informed decision with regard to hiring or licensing an individual.

IV. Effect of the Proposed Changes on Individuals

The Board will disclose information under the proposed routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act.

In accordance with 5 U.S.C. 552a(r), a report of this new system of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. This new system of records will become effective on October 1, 1997, without further notice, unless the Board

publishes a notice to the contrary in the **Federal Register**.

Accordingly, the Payroll system notice originally published at 40 FR 43862 (September 30, 1975) is amended as set forth below, and the Leave (BGFRS–8) system of records is removed.

BGFRS–7

SYSTEM NAME:

Payroll and Leave.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors, Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees and members of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll records, including pay statements; requests for deductions; tax and social security withholdings; Board retirement deductions; voluntary withholdings for the Board's Thrift Plan or FERS, savings bonds, CFC, and insurance; tax forms; W–2 forms; overtime requests; leave data; and worker's compensation data. Leave records, including compensatory time, and codes indicating reasons for taking leave, such as family illness, or military leave.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Federal Reserve Act (12 U.S.C. 248(i) and 248(l)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used for the following purposes.

a. To provide information to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

b. To provide information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

c. To provide information to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

d. To provide information to the Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On tape, disk, folders and document files.

RETRIEVABILITY:

Filed by name, Social Security number, and employee number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized access. Electronic files are protected by passwords. Paper records are stored in cabinets and a safe.

RETENTION AND DISPOSAL:

Various; minimum of one year from date of annual audit; maximum of indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Human Resources Management, Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Internal personnel forms, federal, state, and local tax forms, employee authorizations and directive forms, insurance forms, leave and overtime reports, federal and state garnishment forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, August 14, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–22006 Filed 8–19–97; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Identification of Products With Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0262).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Identification of Products with Environmental Attributes.

DATES: Comment Due Date: October 20, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0262, concerning Identification of Products with Environmental Attributes. This information collection will be used to assist Federal agencies in deciding whether such products will meet their needs and consistent with Federal acquisition law will order such

products in preference to other products that may meet their needs, but do not have environmental benefits.

B. Annual Reporting Burden

Respondents: 3,200; *annual responses:* 3,200; *average hours per response:* .5; *burden hours:* 16,000.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: August 12, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 97–21975 Filed 8–19–97; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Region 9, Portfolio Management; Environmental Impact Statement Notice of Availability and Public Meeting Notice

[Contract No. GS–09P–96–KTD–0020, Order No. P–09–96–KT–004–2]

AGENCY: United States General Services Administration.

ACTION: Environmental Impact Statement Notice of Availability and Public Meeting Notice.

SUMMARY: The General Services Administration (GSA) announces the availability of the Draft Environmental Impact Statement (DEIS) for realignment and expansion of the Tecate Port of Entry (POE) in Tecate, California. GSA will hold a public meeting to take public comments on the DEIS. GSA is proposing to realign and expand the United States Border Facility Tecate Port of Entry (POE) to eliminate on-site traffic safety hazards for motorists and pedestrians and upgrade inadequate water supply, wastewater and stormwater facilities. Commercial inspection booths would be constructed so that inspection activity currently taking place on the southbound shoulder of Tecate Road/State Route 188 would be accomplished within POE boundaries. An addition to the main building would be constructed to allow for more administrative space for United States Customs Service, Immigration and Naturalization agents, and the United States Department of Agriculture. The current water supply system would be expanded to accommodate additional employees and the new addition. A stormwater retention basin would also be constructed. The EIS evaluated alternatives to the preferred action including closure of the POE, placing operating limits on the POE, and no action. This project is necessary to improve the safety and system efficiency of the existing POE. This project is not expected to have a significant impact on environmental resources.

DATES: The public meeting will be held on Thursday, September 18, 1997 from 6–8 PM. The public comment period ends on Monday, September 29, 1997.

ADDRESSES: The public meeting will be held at the Tecate POE, located at the intersection of State Route 188 and the United States/Mexico border. Copies of the EIS are available for review at the following public libraries.

Central Library, 820 East Street, San Diego, CA 92101
Jacumba County Library, P.O. Box 186, Jacumba, CA 91934
Potrero Public Library, 24955 Library Lane, Potrero, CA 91963
Campo Marina County Library, P.O. Box 207, Campo, CA 91906

FOR FURTHER INFORMATION CONTACT: U.S. General Services Administration, *Attn:* Rosanne Nieto 450 Golden Gate Avenue, 3rd Floor West, San Francisco, California 94102. Fax: (415) 522–3215.

Authority: 42 U.S.C. 4321–4347 and 40 CFR 1500–1508.

Dated: August 14, 1997.

Arlin M. Timberlake,

Director, Portfolio Management.

[FR Doc. 97–22022 Filed 8–19–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announced the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:30 p.m., September 8, 1997. 8:00 a.m.–4:00 p.m., September 9, 1997.

The Subcommittee on Health Data Needs, Standards and Security also will meet on September 8 from 7:00 p.m. until 9:30 p.m.

Place: Sheraton City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

The closest metro stops are Foggy Bottom (Blue and Orange lines) and Dupont Circle (Red Line). Limited parking is available in the area.

Status: Open.

Purpose: The meeting will focus on the Committee's progress in addressing new responsibilities in health data standards and health information privacy as outlined in the administrative simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as well as on related matters. Department officials will brief the Committee on recent activities of the HHS Data Council, the status of HHS activities in implementing the administrative simplification provisions of Pub. L. 104–191, and related data policy activities.

The Committee also is planning to consider Subcommittee reports relating to standards for health data security pursuant to Pub. L. 104–191, HIPAA data standards content issues, and OMB standards for race and ethnicity reporting. Based on those reports, the full Committee is planning to consider its HIPAA recommendations to the Secretary of Health and Human Services as well as comments to OMB. Breakout sessions are planned for the Subcommittee on Health Data Needs, Standards and Security, the Subcommittee on Privacy and Confidentiality, and the Subcommittee on Population-Specific Issues. In addition, a presentation is scheduled on the recent National Academy of Sciences panel report on Measurement and Data to Support Public Health Program Performance Measurement. The Committee also will discuss its priorities and work plans. All topics are tentative and subject to change.

Contact Person for More Information: Substantive information as well as summaries of the meeting and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) or by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 13, 1997.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 97–22035 Filed 8–19–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Shoushu Jiao, M.D., University of Wisconsin: Based upon reports from the University of Wisconsin as well as information obtained by the Office of Research Integrity (ORI) during its oversight review, ORI found that Dr. Jiao, former Research Associate, Department of Pediatrics, University of Wisconsin, engaged in scientific misconduct by falsifying and creating laboratory records while conducting biomedical research. The data in these records were reported in a National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH) grant application to support a request for Public Health Service (PHS) funding. Based on the factual findings in the reports, the following article has been retracted: Jiao, S., Gurevich, V., & Wolff, J.A. ''Long-term correction of rat model of Parkinson's disease by gene therapy.'' *Nature* 362:450–453, 1993.

Dr. Jiao has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of four (4) years, beginning on August 8, 1997.

(2) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations) for a period of three (3) years, beginning on August 8, 1997; and

(3) That any institution that submits an application for PHS support for a research project on which Dr. Jiao's participation is proposed, uses him in any capacity on PHS supported research, or submits a report of PHS-funded research in which he is involved must concurrently submit a plan for supervision of his duties to the funding agency for approval for a period of one (1) year following the three (3) year exclusion. The supervisory plan must be designed to ensure the scientific integrity of Dr. Jiao's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–22082 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Jill A. London, Ph.D., University of Connecticut Health Center: Based upon a report from the University of Connecticut Health Center as well as information obtained by the Office of Research Integrity (ORI) during its oversight review, ORI found that Dr. London, former Assistant Professor, Department of Biostructure and Function, School of Dental Medicine, University of Connecticut Health Center, engaged in scientific misconduct by intentionally falsifying data in conjunction with applying for and reporting research supported by the National Institute of Neurological Disorders and Stroke (NINDS) and the National Institute on Deafness and Other Communication Disorders (NIDCD), National Institutes of Health (NIH).

Specifically, ORI found that Dr. London's grant applications and articles contained numerous falsifications, including:

(1) Figures 6, 7, and 8 in a paper (London, J.A. & Cohen, L.B. ''High time resolution, multi-site optical measurement of vertebrate somatosensory cortex during epileptiform discharges and vertebrate gustatory cortex.'' *Optical Methods in Neurobiology*, pp. 61–78, 1988.) prepared for the 11th Annual Meeting of the European Neuroscience Association (hereafter referred to as the European Neuroscience paper) that cited support by NINDS, NIH grants R01 NS08437 and P01 NS16993;

(2) Figure 1A in a paper (London, J.A., ''Optical recording of activity in the hamster gustatory cortex elicited by electrical stimulation of the tongue.'' *Chemical Senses* 15:137–143, 1990.) that cited support by NINDS, NIH grants R01 NS08437 and P01 NS16993; Figure 1A was found to be very similar or identical to Figure 7 of the European Neuroscience paper in #1 above;

(3) Figures 10 to 13 in grant application 2 P50 DC00168–14, ''Connecticut Chemosensory Clinical Research Center,'' submitted to NIDCD, NIH on January 28, 1994; these figures also appear as Figures 4 to 7 in grant application 2 P50 DC00168–14A1, submitted to NIDCD, NIH on September 28, 1994;

(4) Figures 2, 8, and 9 in grant application 1 R01 DC01752–01, ''Optical recording of hamster gustatory cortex activity,'' submitted to NIDCD, NIH on January 29, 1992; these figures were the same as Figures 11, 12, and 13, respectively, in grant application 2 P50 DC00168–14 (see #3 above);

(5) Figures supplied for Figures 1 and 3 in grant application 1 F32 NS09601–01, ''Modular response patterns in hamster gustatory cortex,'' submitted to NINDS, NIH on August 3, 1993; these figures were the same as Figures 10 and 11, respectively, in grant application 2 P50 DC00168–14 (see #3 above);

(6) Figure 3 of a handout that Dr. London provided during an NIH site visit on April 25, 1994, conducted in conjunction with the review of grant application 2 P50 DC00168–14; the top and bottom portions of Figure 3 of the site visit handout were very similar or identical to Figures 6 and 7, respectively, of the European Neuroscience paper (see #1 above), and approximately 115 of the 125 traces appearing in each of the figures showed identities, with one or two ''active'' traces being identical;

(7) Figures 1, 2, and 3 in a paper (London, J.A. & Wehby, R.G. ''Classification of inhibitory responses of hamster gustatory cortex.'' *Brain Research* 666:270–274, 1994.) that cited support by NIDCD, NIH grants P50 DC00168 and T32 DC00025; and

(8) Nine figures included in a manuscript (London, J.A. & Wehby, R.G. ''Excitatory neural responses in the hamster gustatory cortex.'' Submitted to *Brain Research*, 1996.) that cited support by NIDCD, NIH grants P50 DC00168 and T32 DC00025. Dr. London has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed, for a period of five (5) years, beginning August 8, 1997:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant. Dr. London is required to submit a letter to

- *Chemical Senses* requesting a retraction of the following article: London, J.A. ''Optical recording of activity in the hamster gustatory cortex elicited by electrical stimulation of the tongue.'' *Chemical Senses* 15:137–143, 1990;
- *Brain Research* requesting a retraction of the following article: London, J.A., & Wehby, R.G. ''Classification of inhibitory responses of the hamster gustatory cortex.'' *Brain Research* 666:270–274, 1994; and
- *Optical Methods in Neurobiology* requesting a retraction of Section V, Results—Hamster of the following article: London, J.A., & Cohen, L.B. ''High time resolution, multi-site optical measurement of vertebrate somatosensory cortex during epileptiform discharges and vertebrate gustatory cortex.'' *Optical Methods in Neurobiology,* pp. 61–78, 1988, prepared for the 11th Annual Meeting of the European Neuroscience Association.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–22081 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0301]

Ube Industries (America), Inc.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 21, 1997 (62 FR 39003). The document announced that Ube Industries (America), Inc., filed a petition proposing that the food additive regulations be amended to change the melting point range specifications for Nylon 6/66 resins intended for use in contact with food. The document published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

In FR Doc. 97–19127, appearing on page 39003 in the **Federal Register** of Monday, July 21, 1997, the following correction is made:

1. On page 39003, in the first column, Docket No. ''97N–0301'' is corrected to read ''97F–0301''.

Dated: August 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–22091 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 17, 1997, 8 a.m. to 5 p.m.

Location: Gaithersburg Hilton, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Karen M. Templeton-Somers or Robin M. Spencer, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear presentations and discuss data submitted regarding new drug application (NDA) 20–747, Actiq™ (oral transmucosal fentanyl citrate, drug matrix on a handle), Anesta Corp., for the management of chronic pain, particularly breakthrough pain, in patients who are already receiving and are tolerant to opioid therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 4, 1997. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. and 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 4, 1997, 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 requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–22090 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 18, 1997, 8 a.m. to 5:30 p.m., and September 19, 1997, 8 a.m. to 4 p.m.

Location: Quality Suites Hotel, Potomac Rooms I, II, and III, Three Research Ct. (off Shady Grove Rd.), Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information

Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On the morning of September 18, 1997, the committee will discuss the topic of inadvertent contamination of plasma. In the afternoon, the committee will hear a proposal for management of plasma and plasma donors presented by the International Plasma Products Industry Association. On September 19, 1997, the committee will discuss the topic of cryoprecipitate-depleted plasma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 10, 1997. Oral presentations from the public will be scheduled between approximately 11 a.m. and 11:30 a.m. and 2 p.m. and 3 p.m. on September 18, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 10, 1997, 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 requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–22088 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 15, 1997, 9:30 a.m. to 6 p.m., and September 16, 1997, 8:30 a.m. to 3 p.m.

Location: Gaithersburg Hilton, Salons A, B, and C of the Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 15, 1997, the committee will hear a presentation of the basic concepts of FDA's Product Development Process. The committee will discuss and make recommendations on two premarket approval (PMA) applications for prosthetic heart valves. On September 16, 1997, the committee will discuss and make recommendations on a PMA for a prosthetic heart valve.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 5, 1997. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on September 15, 1997, and between approximately 8:30 a.m. and 9:30 a.m. on September 16, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 5, 1997, 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 requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–22089 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–1500, OMB #0938–0008]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. The HCFA–1500 is used to determine proper payment for certain Medicare services rendered to Medicare beneficiaries. Without this information HCFA would not be able to obtain the information necessary to reimburse providers. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of providers not rendering services to Medicare beneficiaries due to the possibility of non-payment.

HCFA is requesting OMB review and approval of this collection by 09/01/97, with a 180-day approval period. During this 180-day period HCFA will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval. In this submission HCFA will respond as appropriate to the public comments received in response to the 10/24/97 **Federal Register** notice requesting public comment on the continued use of the HCFA–1500 and related data.

1. *Type of Information Collection Request:* Extension of a currently approved collection, without change; *Title of Information Collection:* Medicare/Medicaid Health Insurance Common Claim Form and Instructions, and Supporting Regulations 42 CFR 424.32 (Basic Requirements for all Claims) and 42 CFR 414.40 (Coding and Ancillary Policies); *Form No.:* HCFA–1500 (OMB #0938–0008); *Use:* This form and instructions are standardized for use in the Medicare/Medicaid programs to apply for reimbursement for covered

services. HCFA does not require exclusive use of this form for Medicaid. 42 CFR 424.32 and 42 CFR 414.40 are regulations underlying the use of the form HCFA–1500 and the information captured on the form HCFA–1500, including the use of diagnostic and procedural coding systems. HCFA solicits comments on any and all aspects of the HCFA–1500, and the use of diagnostic and procedural coding systems: HCFA currently uses the most current version of the ICD–9–CM and CPT/HCPCS; *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions, State, local or tribal government; *Number of Respondents:* 976,239; *Total Annual Responses:* 644,802,413; *Total Annual Hours:* 46,797,008.

To obtain copies of the supporting statement and any related forms and instructions for the proposed paperwork collection referenced above, E-mail your request, including your address and phone number, to JRudolph@hcfa.gov, or call the Reports Clearance Office on (410) 786–1324.

Written comments and recommendations for the proposed information collection should be faxed (202) 395–6974 or sent directly to the OMB Desk Officer designated at the following address, by 08/28/97: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 18, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–22255 Filed 8–19–97; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September, 1997.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 10, 1997; 9:00 a.m.–5:00 p.m.

Place: Parklawn Building, Conference Rooms D and E, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, September 10 from 9:00 a.m. to 5:00 p.m.

Agenda: Agenda items will include, but not be limited to: a report from the ACCV Subcommittee on Vaccine Safety, an update on the passage of excise tax legislation within P.L. 105–34 on H.R. 2014, an overview of the adjudication process under the National Vaccine Injury Compensation Program, and routine Program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on September 10. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign-up in Conference Room D and E on September 10. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: August 14, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–22026 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committees have been filed with the Library of Congress:

Health Professions and Nurse Education Special Emphasis Panel

The FY 1996 Report does not encompass all of the Title VII or any of the Title VIII programs of the Public Health Service Act. These programs will be incorporated in the FY 1997 Report.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. Copies may be obtained from: Ms. Sherry Whipple, Program Analyst, Peer Review Branch, Bureau of Health Professions, Room 8C–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5926.

Dated: August 14, 1997.

Jane Harrison,

Advisory Committee Management Office, HRSA.

[FR Doc. 97–22024 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1997:

Name: National Advisory Council on Migrant Health (NACMH).

Date and Time: Starts: Thursday, September 11, 1997, at 9:00 am; Ends: Saturday, September 13, 1997, at 5:00 pm.

Place: Radisson Hotel City Centre, 31 West Ohio Street, Indianapolis, IN, 317/635–2000.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include a report on the Interstate Migrant Education meeting, the 1997 NACMH Recommendations, and strategic planning for the Council. In addition, the Council will be holding its annual Advocate and Farmworker Public Hearings. The Advocate Hearing is scheduled for Friday, September 12 from 4 to 6 p.m. in the Panorama

Ballroom at the Radisson Hotel City Centre. The Farmworker Hearing is scheduled for Saturday, September 13 from 9 a.m. to 5 p.m. in the Carter Chapel at Indiana Wesleyan University, 4201 S. Washington St., Marion, Indiana 46953.

The Council meeting is being held in conjunction with the 1997 Midwest Farmworker Stream Forum, September 11–14, 1997. The Stream Forum also will take place at the Radisson Hotel City Centre, Indianapolis, IN.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, Room 7–5A1, Bethesda, Maryland 20814, Telephone 301/594–4302.

Agenda items are subject to change as priorities indicate.

Dated: August 14, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–22027 Filed 8–19–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Pub. L. 92–463, as amended, notice is hereby given of the thirty-seventh meeting of the Fogarty International Center (FIC) Advisory Board, September 23, 1997, in the Lawton Chiles International House (Building 16) at the National Institutes of Health. The Research Awards Subcommittee will meet on September 22 in the FIC Conference Room, Building 31, Room B2C07, from 1:00 p.m. to approximately 4:00 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 8:30 a.m. to approximately 12:00 noon.

The agenda will include a report by the Director, FIC; a report on the status of the planning and implementation process of the Government Performance and Results Act at the NIH; a presentation on the results of the evaluation of the International Cooperative Biodiversity Groups Programs; a presentation on the Institute of Medicine's Board on International Health Report ''America's Vital Interest in Global Health;'' and an update on FIC long-range planning activities.

In accordance with the provisions of sections 552b(c)(4) and 552(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92–463, as amended, the entire meeting of the Research Awards Subcommittee on September 22 will be closed to the public from 1:00 p.m. to approximately 4:00 p.m., and the Board meeting on September 23 will be closed to the public from 1:00 p.m. to adjournment for the review of applications for awards under the Senior International Fellowship Program; and the Fogarty International Research Collaboration Awards and HIV, AIDS and Related Illnesses Collaboration Awards.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Fellowship Awards Program, and 93.934, Fogarty International Research Collaboration Award.)

Dated: August 12, 1997.

Laverne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22032 Filed 8–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

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 National Institute of General Medical Sciences meeting:

Committee Name: Biomedical Research & Research Training Committee (BRRT) Subcommittees—A, B, and C.

Date: November 6–7, 1997.

Time: 08:30 a.m. until 5:00 p.m.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carol Latker, Ph.D., Irene Glowinski, Ph.D., Arthur Zachary, Ph.D., Office of Scientific Review, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19D, Bethesda, MD 20892–6200.

Telephone: 301–594–3663.

Purpose: To review pre and post doctoral service applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: August 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22031 Filed 8–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Biomedical Uses of Topoisomerase I Inhibitors Including Camptothecin and Derivatives for Retroviral Applications Including Human Immunodeficiency Virus (HIV)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a domestic exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Virologix Corporation of New York, New York. The patent rights in these inventions have been assigned to the government of the United States of America. The patents and patent applications to be licensed are:

''METHOD OF TREATING RETROVIRAL INFECTIONS IN MAMMALS''

U.S. Patent Application Serial No. 07/520,456, filed May 8, 1990, which issued on June 6, 1995 as U.S. Patent No. 5,422,344; and

U.S. Patent Application Serial No. 08/397,936, filed March 3, 1995, which issued on April 22, 1997 as U.S. Patent No. 5,622,959.

DATES: Only written comments and/or applications for a license which are received by NIH on or before October 20, 1997 will be considered.

ADDRESSES: Requests for a copy of these patents, inquiries, comments, and other materials relating to the contemplated license should be directed to: J. Peter Kim, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056, ext. 264; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to a method of treating retroviral infections in mammals via the use of an effective amount of topoisomerase I inhibitor such as camptothecin (CPT) and similar compounds which act as inhibitors of retrovial topoisomerase I, blocking both the initiation of retroviral infection and replication in target cells. As a consequence of this mechanism of action, use of such inhibitors provides a potential means of reducing or eliminating retroviral infections and their deleterious consequences through both human and veterinary medicine applications.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. Copies of the subject issued patents are available upon request.

Dated: August 4, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–22033 Filed 8–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–2397, N–61883]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of reversionary interest in previously patented public land in Lander County, NV.

SUMMARY: The following described land in Lander County, Nevada, patented to the Board of Regents, University of Nevada under provisions of the Recreation and Public Purposes Act, as amended, has been examined and found suitable for elimination of the reversionary clause in the patent, under provisions of Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 18 N., R. 41 E.,
Section 25, E½E½E½E½SE¼;
consisting of 10 acres, more or less.

The above-described interest in the land would be conveyed directly to the present owner of record, the Board of Regents, University of Nevada. This interest will not be conveyed until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Judy Fry, Realty Specialist, Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, P.O. Box 1420, Battle Mountain, NV 89820, (702) 635–4000.

SUPPLEMENTARY INFORMATION: The land was patented in 1969 for use as an agriculture experiment station. The patent (number 27–69–0155) includes a clause providing for title to the land to revert to the United States if the lands are devoted to a use other than an agriculture experiment station. A July, 1995, compliance inspection of the facility, showed it was no longer in use as an agricultural experiment station. This was confirmed by the University on December 5, 1995, and a request for full title was made to the Bureau of Land Management. This application to purchase the reversionary interest of the United States also constitutes an application for conveyance of the mineral interests. The applicant will be required to submit a $50.00 nonrefundable filing fee for conveyance of the mineral interest. Payment by the University of Nevada of other fees associated with this transaction will also be required.

The land has been substantially altered to the point where management by the Bureau of Land Management would not be feasible. The land is not needed for any resource program and is not suitable for management by another Federal department or agency. It would be difficult and uneconomic to manage, if title reverted to the United States.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a supplemental patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from date of this publication, which ever occurs first.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. A right-of-way for Federal Aid Highway CC–021379A constructed by the authority of the Federal Aid Highway Act of August 27, 1958, as amended, 23 U.S.C. 317;

And will be subject to all other valid existing rights.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the District Manager, Battle Mountain District, 50 Bastian Way, Box 1420, Battle Mountain, NV 89820. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: August 1, 1997.

Gerald M. Smith,

District Manager.

[FR Doc. 97–22009 Filed 8–19–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–9820–02–ID04]

Idaho: Filing of Plats of Survey

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. August 11, 1997.

The supplemental plat prepared to locate lot 4 in section 15 and lot 4 in section 28, T. 4 N., R. 4 E., Boise Meridian, Idaho, was accepted, August 11, 1997.

This survey was executed to meet certain administrative needs of the USDA Forest Service. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: August 11, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–22016 Filed 8–19–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. August 11, 1997.

The plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North (south boundary), and the survey of tract No. 39, unsurveyed T. 30 N., R. 7 E., Boise Meridian, Idaho, Group 928, was accepted, August 11, 1997.

This survey was executed to meet certain administrative needs of the U.S. Forest Service. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: August 11, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–22017 Filed 8–19–97; 8:45 am]

BILLING CODE 4310–GG–M.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Ecosystem Roundtable (a subcommittee of the Bay-Delta Advisory Council) will meet to discuss the following issues: an update on the type and number of proposals received as a result of the 1997 Category III Request for Proposals; the evaluation and selection process for the proposals; restoration coordination activities; and future priorities and schedule for the Restoration Coordination Program. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Ecosystem Roundtable will meet from 9:30 am to 4:00 pm on Friday, September 12, 1997.

ADDRESSES: The Ecosystem Roundtable will meet in Room 1131, 1416 Ninth Street, Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: For the Ecosystem Roundtable meeting contact Kate Hansel, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meetings will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 14, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–22039 Filed 8–19–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Final)]

Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: August 13, 1997.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION: Effective June 10, 1997, the Commission established a schedule for the conduct of the final phase of the subject investigations (62 FR 34304, June 25, 1997). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations involving China, Ukraine, and Russia from August 18, 1997, to October 24, 1997 (62 FR 40500, July 29, 1997; 62 FR 41927, August 4, 1997; and 62 FR 42746, August 8, 1997), conforming the date for its final determinations in these investigations with that for its investigation involving South Africa (62 FR 31963, June 11, 1997). The Commission, therefore, is revising its schedule to conform with Commerce's new schedules.

The Commission's new schedule for the investigations is as follows: the prehearing staff report will be placed in the nonpublic record on October 15, 1997; requests to appear at the hearing and prehearing briefs must be filed with the Secretary to the Commission not later than October 22, 1997; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 24, 1997; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 28, 1997; the deadline for filing posthearing briefs is November 5, 1997; the Commission will make its final release of information on November 21, 1997; and final party comments are due on November 25, 1997.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended in 61 FR 37818, July 22, 1996.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22055 Filed 8–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383]

Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Commission Decision To Extend by Fifteen Days the Deadline for Determining Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to extend by 15 days, i.e., until October 2, 1997, the administrative deadline for determining whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on July 31, 1997, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 8, 1996, based on a complaint filed by Quickturn Design Systems of Mountain View, California. 61 FR. 9486. The notice of investigation named Mentor Graphics Corp. of Wilsonville, Oregon and Meta Systems of Saclay, France as respondents. The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hardware logic emulation systems that allegedly infringed over 40 claims of five different patents. Because of the complexity of this investigation, the target date for completing the investigation has been extended to December 1, 1997.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

Issued: August 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22053 Filed 8–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–368–371 (Final)]

Certain Steel Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–368–371 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Canada, Germany, Trinidad and Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of these investigations, Commerce has defined the subject merchandise as ''hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for [being made of] (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel, (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods. The following products are also excluded from the scope of the investigations:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as corrected by 62 FR 39438, July 23, 1997.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters of certain steel wire rod in Canada, Germany, Trinidad and Tobago, and Venezuela. The investigations were requested in a petition filed on February 26, 1997, by Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Texas, Inc., Beaumont, TX; and Northwestern Steel & Wire, Sterling, IL.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 2, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 16, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 8, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 10, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera *no* later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 9, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 24, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 24, 1997. On November 13, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 17, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 11, 1997.

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greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as ''tire cord wire rod.''

Coiled products 7.9 mm to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 percent to 0.73 percent carbon by weight. This product is commonly referred to as ''valve spring quality wire rod.''

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22051 Filed 8–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–400]

Certain Telephonic Digital Added Main Line Systems, Components Thereof, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 15, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Raychem Corporation, 300 Constitution Drive, Menlo Park, CA 94025. A supplement to the complaint was filed on August 7, 1997. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain telephonic digital added main line systems, components thereof, and products containing the same by reason of infringement of claims 1–7 of U.S. Letters Patent 5,459,729, claims 1, 3–11 and 14–16 of U.S. Letters Patent 5,459,730, and claims 1–5, 7–11 of U.S. Letters Patent 5,473,613. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1996).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 12, 1997, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain telephonic digital added main line systems, components thereof, and products containing the same by reason of infringement of claims 1–7 of U.S. Letters Patent 5,459,729, claims 1, 3–11 and 14–16 of U.S. Letters Patent 5,459,730, or claims 1–5, 7–11 of U.S. Letters Patent 5,473,613, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Raychem Corporation, 300 Constitution Drive, Menlo Park, CA 94025.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ECI Telecom, Ltd., 30 Hasivim Street, P.O.B. 3083, Petah Tikva, 49130, Israel

ECI Telecom, Inc., 927 Fern Street, Altamonte Springs, FL 32701.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401-O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of timefor submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 13, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22054 Filed 8–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–391]

Certain Toothbrushes and the Packaging Thereof; Notice of Commission Determination Not To Review an Initial Determination Finding Respondent Giftline International Corporation in Default; Request for Written Submissions on the Issues of Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) in the above-captioned investigation finding respondent Giftline International Corporation (Giftline) in default, and to have waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation.

FOR FURTHER INFORMATION CONTACT: Anjali K. Hansen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3117.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 22, 1996, based on a complaint filed by The Procter & Gamble Company (P&G) concerning allegations of unfair acts in violation of section 337 in the importation and sale of certain toothbrushes covered by U.S. Letters Patent Des. 328,392. The complaint, as amended, also alleged copyright infringement by certain respondents, but those allegations were subsequently withdrawn from the investigation.

The complaint and notice of investigation were served on all respondents, but respondent Giftline failed to respond to the complaint and notice of investigation in the manner required by Commission rule 210.13(b). On March 7, 1997, complainant P&G filed a motion for an order for Giftline to show cause why it should not be found in default for failure to respond to the amended complaint and notice of investigation pursuant to Commission rule 210.16. The Commission investigative attorney filed a response in support of the motion, and respondents Shummi Enterprise Co., Ltd. and Shumei Industrial Co., Ltd. filed a response stating that they do not oppose the motion. On July 2, 1997, the presiding ALJ issued an order (Order No. 5) directing Giftline to show cause why it should not be found in default by July 14, 1997. Giftline failed to make such a showing. Accordingly, on July 23, 1997, the ALJ issued an ID (Order No. 9) finding Giftline in default pursuant to Commission rule 210.16 and ruling that Giftline had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. No party petitioned for review of the subject ID.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. The Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion in *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. 2843 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation (other than Giftline), interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the July 2, 1997, recommended determination of the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on September 8, 1997. Reply submissions must be filed no later than the close of business on September 15, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42 and 210.50).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: August 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22056 Filed 8–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–376]

Certain Variable Speed Wind Turbines and Components Thereof; Notice of Commission Determinations Concerning Federal Circuit Remand Question and Respondents' Motion To Show Cause and Petition for Rescission of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, in response to an order issued by the U.S. Court of Appeals for the Federal Circuit (''the Federal Circuit'') on April 24, 1997 (the ''remand order''), the U.S. International Trade Commission determined that the requirement of section 337(a)(3), 19 U.S.C. § 1337(a)(3), regarding the presence of a domestic industry is satisfied by the domestic activities of Zond and the domestic activities of the companies licensed by Zond to practice the invention of claim 131 of U.S. Letters Patent 5,083,039.

Thus, the Commission determined that, by virtue of its ownership of the '039 patent and its licensing of significant domestic activities practicing that patent, Zond is part of the domestic industry. The Commission also determined that further proceedings are not necessary to resolve any factual issues presented by the question posed by the Court on remand, and to deny respondents' motion to show cause and their petition to rescind the limited exclusion order. The Commission will issue an opinion shortly concerning these issues.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the GeneralCounsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was conducted by the Commission in 1995 and 1996 based on a complaint filed by Kenetech Windpower, Inc., of Livermore, California (''Kenetech'') to determine whether there was a violation of section 337 in the importation, sale for importation, and/or the sale within the United States after importation, of certain variable speed wind turbines and components thereof by reason of infringement of claim 131 of U.S. Letters Patent 5,083,039 (''the '039 patent'') and claim 51 of U.S. Letters Patent 5,225,712 (''the '712 patent''), both owned by Kenetech. Enercon GmbH of Aurich, Germany (''Enercon'') and The New World Power Corporation of Lime Rock, Connecticut were named as respondents (collectively ''respondents''). The Commission found a violation of section 337 had occurred and issued a limited exclusion order. Because Kenetech had filed for bankruptcy under Chapter 11 of theU.S. Bankruptcy Act by the time the exclusion order was issued, and had by then ceased manufacturing wind turbines, the Commission required Kenetech to submit quarterly reports detailing its domestic activities exploiting the '039 patent.

After the President declined to disapprove the Commission's determination, Enercon appealed to the Federal Circuit. Subsequently, in its March 31, 1997, quarterly report, Kenetech informed the Commission that it had sold the '039 patent to Zond Energy Systems, Incorporated (''Zond''). That quarterly report states that Kenetech continues to exploit the '039 patent, apparently under license from Zond.

Before any briefs were submitted in the appeal, but after the time for filing a motion to intervene had expired, Zond moved to intervene, asserting that it had standing to intervene based on its ownership of the patent in issue. Enercon opposed Zond's intervention, arguing that Zond must first show that it qualifies as a domestic industry under section 337 in order to enter an appearance in the appeal, and that Zond had failed to show it had the requisite standing to participate in the appeal. On April 24, 1997, the Federal Circuit issued an order remanding the case to the Commission for the Commission to determine in the first instance: (1) ''whether Zond should be substituted for Kenetech;'' and (2) ''whether Zond qualifies as a domestic industry.''

The Commission reopened this investigation, reinstated the protective order issued in this investigation, and requested comments from the parties' counsel on the questions posed by the Federal Circuit remand. On June 12, 1997, Zond filed a motion to intervene in this investigation. On July 8, 1997, the Commission issued an order permitting Zond to intervene in the remand proceeding as a co-complainant. Zond's motion effectively presented the Commission with the same issue posed by the Federal Circuit's first remand question. The Commission has concluded that its decision on the motion to intervene is equally applicable to the first remand issue. Thus, in response to the first of the Federal Circuit's remand questions, the Commission has determined that, rather than substituting Zond for Kenetech, Zond should be permitted to intervene as a co-complainant. *See* Order Granting Motion to Intervene of Patent Owner Zond Energy Systems, Inc. (July 8, 1997).

On June 16, 1997, respondents and the Commission investigative attorney (''IA'') filed comments on the remand issues, and on June 23, 1997, all parties filed reply comments.

On June 27, 1997, respondents filed a motion for an order to show cause why the law firm of Howrey & Simon should not be deemed continuing counsel to Kenetech. Howrey & Simon and the IA subsequently responded to that motion. On July 9, 1997, Howrey & Simon filed a notice of withdrawal as counsel to Kenetech.

On July 2, 1997, respondents filed a petition under Commission rule 210.76(a)(2) seeking rescission of the exclusion order issued by the Commission on August 30, 1996. Both Zond and the IA filed responses in opposition to that petition.

Copies of the Commission's order, the public version of the opinion in support of that order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

Issued: August 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22052 Filed 8–19–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1859–97]

Form Numbers for American Indian and Northern Marianas Cards

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: In September 1997, the Immigration and Naturalization Service (INS or Service) will begin producing two versions of identification cards with new designs and form numbers. The new cards are Form I–872, the American Indian Card, for United States citizens who are members of the Texas Band of the Kickapoo Indian Tribe, as identified in Pub. L. 97–429, and Form I–873, the Northern Marianas Card, for United States citizens from the Commonwealth of the Northern Marianas, as identified in Public Law 94–241 or by Presidential Proclamation 5564. The card design changes are being implemented using the latest security technology in order to reduce the risk of fraud.

EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Geoff Verderosa, Immigration and Naturalization Service, Benefits Division, Residence and Status Services, 425 I Street NW., Room 3214, Washington, DC 20536, Telephone 202–514–3156.

SUPPLEMENTARY INFORMATION:

What Are the Two New Cards Being Produced in September 1997?

In September 1997, the Service will begin producing two newly designed cards for specific categories of citizens identified in Pub. L. or Presidential Proclamation. The new cards are the American Indian Card for members of the Texas Band of the Kickapoo Indian Tribe and the Northern Marianas Card for the United States citizens from the Commonwealth of the Northern Marianas Islands. The Service will stop producing the current versions of the citizen identification cards for the Kickapoo Indian Tribe and Northern Marianas Islanders.

Will the New Cards Appear Different From the Current Cards?

The new American Indian and Northern Marianas citizen cards will have a different appearance than the current cards. The Service will inform affected parties of this change by initiating a public information campaign in September 1997.

Will There Be a Change in the Filing Procedures To Apply for These Cards?

No. Kickapoo Tribe members and Northern Marianas Islanders should continue to follow the instructions on the respective application forms when filing for replacement of their citizen identification card.

Will My Current American Indian Card or Northern Marianas Card Remain Valid?

Yes. New cards will be issued using ICPS technology, but the validity of current American Indian and Northern Marianas Cards are unaffected by this change.

How Will My New American Indian or Northern Marianas Card Be Delivered?

The cards will continue to be mailed and delivered by the U.S. Postal Service.

Dated: August 13, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–22021 Filed 8–19–97; 8:45 am]

BILLING CODE 4410–10–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Correction; Privacy Act of 1974; Proposed New System of Records Notice.

SUMMARY: As required by The Privacy Act of 1974, the Merit Systems Protection Board published a notice in the **Federal Register** on Monday, August 4, 1997 (62 FR 41978) proposing to establish a new system of records entitled Workload and Assignment Tracking System. This notice corrects the wording of MSPB/INTERNAL–5, system of records notice as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

b. Information concerning the nature of the assigned task, the dates of assignment, required completion and actual completion. The system may also contain notes and comments pertaining to the assignment.

PURPOSE:

These records are used for internal assignment and tracking of workload and may also be used to monitor assignments to MSPB employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To the General Accounting Office in response to an official inquiry or investigation;

RETENTION AND DISPOSAL:

Electronic records in this system may be maintained for a period of five years, and then transferred to magnetic tape and maintained indefinitely, or until the Board no longer needs them.

FOR FURTHER INFORMATION CONTACT:

Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: August 14, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–22008 Filed 8–19–97; 8:45 am]

BILLING CODE 7400–01

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 22, 1997.

   Time: 9:00 a.m. to 5:30 p.m.

   Room: 415.

   Program: This meeting will review applications for Humanities Radio Programming in Radio Projects, submitted to the Division of Public Programs for projects at the August 18, 1997 deadline.

2. *Date:* September 26, 1997.

   Time: 9:00 a.m. to 5:30 p.m.

   Room: 415.

   Program: This meeting will review applications for Humanities Radio Programming in Radio Projects, submitted to the Division of Public Programs for projects at the August 18, 1997 deadline.

Michael S. Shapiro,

General Counsel.

[FR Doc. 97–22038 Filed 8–19–97; 8:45 am]

BILLING CODE 7536–01–M

PENSION BENEFIT GUARANTY CORPORATION

Agency Information Collection Activities: Notice of Intention To Request Extension of OMB Approval of Collection; Comment Request—Termination of Single Employer Plans; Missing Participants; PBGC Forms 500–501, 600–602

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act of 1995, of a collection of information in its regulations on Termination of Single Employer Plans and Missing Participants, and implementing forms and instructions (OMB control number 1212–0036; expires December 31, 1997). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 20, 1997.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days. Copies of the forms and instructions may be obtained free of charge by writing or visiting the PBGC's Communications and Public Affairs Department at the above address.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and the PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to the PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and the PBGC's missing participants regulation (29 CFR part 4050).

On March 14, 1997 (62 FR 12508), the PBGC published a proposed rule to extend standard termination deadlines and otherwise to simplify the standard termination process, to require that plan administrators provide participants with information on state guaranty association coverage of annuities, and to make conforming changes to the distress termination process. The amendments also make conforming and simplifying changes to the missing participants regulation. In addition, the PBGC made clarifying and other changes (related to the proposed rule) to its implementing forms and instructions under the termination and missing participants regulations. OMB approved the collection of information in the proposed rule.

The PBGC expects to publish a final rule amending its termination and missing participants regulations later in 1997. Terminations initiated before the effective date of the final rule generally will be subject to the existing requirements. (The PBGC may specify in the final rule certain portions of the final rule that plan administrators may apply to terminations in process at the time the final rule becomes effective.) Thus, even after the effective date of the final rule, there will be a period of time during which the existing collection of information requirements will apply for some terminations.

Much of the work associated with terminating a plan is performed for purposes other than meeting the collection of information requirements in the PBGC's termination and missing participants regulations. The PBGC estimates that 3,940 plan administrators will be subject to the existing requirements each year, and that the total annual burden of complying with these requirements is 5530 hours and $3,477,940. (The burden estimates under the March 14, 1997, proposed rule were detailed at 62 FR at 12509.)

Comments on these collection of information requirements may address (among other things)—

- Whether the collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The PBGC already allows electronic submission of participant and beneficiary data in a distress termination and has been actively considering whether to allow other information to be provided electronically. In certain circumstances, the proposed rule allows electronic filing with the PBGC and electronic issuance of notices to third parties. In the proposed rule (62 FR at 12509), the PBGC invited comments on electronic filing and issuance requirements and on whether, given the PBGC's limited role in standard terminations, the burden of the standard termination filing process could be further reduced. The PBGC welcomes comments on these matters in response to this notice as well.

Issued in Washington, DC, this 14th day of August, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–22040 Filed 8–19–97; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, August 28, 1997.

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for

Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: August 7, 1997.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–21979 Filed 8–19–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, August 21, 1997, has been cancelled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street NW., Washington, DC 20415, (202) 606–1500.

Dated: August 13, 1997.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–21980 Filed 8–19–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–1(b), SEC File No. 270–28, OMB Control No. 3235–0032

Rule 17f–1(c) and Form X–17F–1A, SEC File No. 270–29, OMB Control No. 3235–0037

Rule 17h–1T and 17h–2T, SEC File No. 270–359, OMB Control No. 3235–0410

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17f–1(b) Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(b) requires approximately 19,000 entities in the securities industry to register in the Lost and Stolen Securities Program. Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential data base that stores information for the Program.

It is estimated that 600 respondents will register in the Lost and Stolen Securities Program annually. It is also estimated that each respondent will register one time. The average number of hours necessary to comply with the Rule 17f–1(b) is one-half hour. The total annual burden is 300 hours for respondents, based upon past submissions. The cost per hour is approximately $30. Therefore, the total cost of compliance for respondents is $9,000.

Rule 17f–1(c) and Form X–17F–1A Reporting of missing, lost, stolen, or counterfeit securities.

Rule 17f–1(c) requires approximately 23,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database. Form X–17F–1A facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

It is estimated that 23,000 reporting institutions will report that securities are either missing, lost, counterfeit, or stolen annually. It is also estimated that each reporting institution will submit this report 29 times each year. The average amount of time necessary to comply with Rule 17f–1(c) and Form X–17F–1A is five minutes. The total annual burden is 55,583 hours for respondents, based upon past submissions. The average cost per hour is approximately $30. Therefore, the total cost of compliance for respondents is $1,667,490.

Rules 17f–1T and 17h–2T Risk Assessment Recordkeeping and Reporting Requirements for Associated Persons of Brokers and Dealers.

Rules 17h–1T and 17h–2T require certain broker-dealers to maintain and file with the Commission certain records relating to the activities of affiliates whose business activities are reasonably likely to have a material impact on the broker-dealers. These rules enable the Commission to gather complete and timely information about the activities of broker-dealer affiliates in a form necessary for surveillance, enforcement, and other regulatory purposes. The Commission uses this information to assess the potentially

damaging impact of the activities of associated persons on registered broker-dealers.

It is estimated that approximately 250 respondents will maintain and report information under these rules on a quarterly basis. The average number of hours necessary to comply with Rules 17h–1T and 17h–2T is six hours per quarter. The total annual burden is 6,000 hours for respondents, based upon past submissions. The cost per hour is approximately $416.67. Therefore, the total cost of compliance for respondents is $2,500,000 (6,000 total hours multiplied by $416.67).

The information required by the Rules must be maintained and preserved by the respondents for a period of not less than three years in an easily accessible place. In addition, it is mandatory for broker-dealers subject to Rules 17h–1T and 17h–2T to maintain and file the information required by the Rules. All information received by the Commission pursuant to the Rules is kept confidential. Finally, the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21982 Filed 8–19–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38928; File No. SR–CBOE–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Eligibility Requirements for Participation on the RAES System

August 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to add two additional eligibility requirements that market makers must satisfy in order to participate in the Exchange's Retail Automatic Execution System (''RAES'') under CBOE Rule 8.16. The Exchange is also proposing to clarify that Rule 8.16 applies to RAES for all CBOE options other than options on the Standard & Poor's 100 Stock Index (''OEX'') and options on the Standard & Poor's 500 Stock Index (''SPX''), which have separate RAES rules. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 8.16, the rule governing RAES [1] eligibility for CBOE options (other than OEX and SPX), by adding two eligibility requirements which market makers must satisfy before they may continue to participate on RAES. In addition, the Exchange is making certain changes to CBOE Rule 8.16 to make it clear that the rule applies to RAES participation in all CBOE options other than options on the OEX and SPX.

Currently, CBOE Rule 8.16 does not contain any eligibility requirement for participating on RAES that is related to a market maker's trading activity. Paragraph (a) of Rule 8.16 merely requires a market maker: (i) To log onto the system using his own acronym and individual password; (ii) to designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant; and (iii) to log on only in person and to continue on the system only so long as he is present in the trading crowd. The Exchange has learned, however, that a few market makers across the floor have relied on their participation in RAES to derive a large percentage of their profits and have not been inclined to take the risks involved with proactively fulfilling their market maker obligations as set forth in CBOE Rule 8.3.[2] Participation on RAES was intended to be an adjunct, and not a substitute, to the normal operation of a traditional market making business. To the extent a market maker is able to derive some profits from participation on RAES with little risk, RAES participation can act as a disincentive to

[1] RAES is the Exchange's automatic execution system for small (generally less than 10 contracts) public customer market or marketable limit orders. When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the offer; a sell order will sell at the bid. An eligible market maker who is signed onto the system at the time the order is received will be designated to trade with the public customer order at the assigned price.

[2] The obligations of a market maker as set forth in CBOE Rule 8.3 include, among others, to compete with other market makers to improve markets in all series of option classes where the market maker is present, to make markets that, absent changed circumstances, will be honored to a reasonable number of contracts, and to update quotations in response to changed market conditions.

these market makers to perform their obligations under Rule 8.7.[3]

Consequently, the Exchange has determined that there should be a limit on the percentage of a market maker's overall trades, both in terms of total transaction and contract volume, that a market maker may transact on RAES over a designated period of time. The Exchange believes that this eligibility standard will provide an incentive to those market makers that currently derive a large percentage of their activity from RAES to actively fulfill their market making obligations. Additionally, this proposal would ensure that those market makers that actively fulfill their obligations are the same ones that receive the benefits of RAES participation.

The Exchange is not at this time proposing specific percentages which market makers will have to satisfy because it expects that the percentages will have to be adjusted from time to time as the Exchange gains experience with the effect of these requirements. Instead the Exchange is proposing that the Market Performance Committee be given the authority to set the percentages and the time period over which these percentages shall be determined. The Market Performance Committee would provide advance notice by way of a regulatory circular of the applicable percentages before the beginning of any time period during which these percentages would be calculated. The Market Performance Committee would also have the authority to provide exemptions to certain option classes and for all market maker activity in one or more classes of options for certain days. Finally, the Market Performance Committee would have the authority to apply the percentages in aggregate to all the options traded at a particular trading station or to single option classes.

For example, the Market Performance Committee might determine that in order to remain eligible to participate on RAES in a particular class of options a market maker may not execute through RAES orders more than 25% of his total transactions or more than 25% of his total contract volume during a particular calendar quarter. Under these requirements, the Market Performance Committee may grant exemptions from these requirements in situations in which it would be more difficult than normal to satisfy the criteria. For example, the Market Performance Committee might grant exemptions from the requirements where: (i) The average daily volume of contracts traded in the class of options is less than 100 per day for the calendar quarter; or (ii) the aggregate number of transactions in the option class at the Exchange executed through RAES orders by all market makers during the calendar quarter is greater than 25% of the number of total transactions in the option class executed by all market makers in the calendar quarter; or (iii) the aggregate contract volume at the Exchange in the option class resulting from transactions executed through RAES by all market makers during the calendar quarter is greater than 25% of the total contract volume at the Exchange in the option class executed by all market makers in the calendar quarter. In addition, the Market Performance Committee might determine to exempt a particular day of trading from the calculations if there was an unusually large volume of RAES transactions during a particular day.

In addition to being ineligible to participate on RAES, violations of the above requirements could subject the member to disciplinary action or other remedial action by the Market Performance Committee under paragraph (d) of Rule 8.16. Of course, as with all Exchange decisions involving economic aggrievement a market maker who was the subject of a Market Performance remedial action would have the right to appeal such decision under Chapter XIX of the Exchange's rules. Appeal rights also exist under Chapter XVII of the Exchange's rules for disciplinary actions taken by the Exchange. Also, despite a market maker's ineligibility under the provisions of CBOE Rule 8.16, the Exchange's Market Performance Floor Officials could require, pursuant to paragraph (c) of Rule 8.16, the ineligible market maker to log onto RAES if there is inadequate RAES participation in a particular options class.

2. Statutory Basis

CBOE believes that the proposed rule change should provide an incentive to Exchange market makers to proactively fulfill their obligations under Exchange rules. As such, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[4] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–37 and should be submitted by September 10, 1997.

[3] While the Market Performance Committee has the authority under rule 8.60 to take remedial action against a market maker who has been found to have not fulfilled his Rule 8.3 performance standards, it is often difficult to proceed against a particular market maker, as opposed to a trading crowd, where there are no objective criteria on which to base that market maker's performance. The proposed changes to the eligibility standards, on the other hand, will set forth objective criteria and should to a large extent be self-policing because a market maker who does not meet the objective criteria may lose their right to continue to participate on RAES.

[4] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–22057 Filed 8–19–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38930; File No. SR–NYSE–97–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Regulation of Market Data Used on the Exchange Floor

August 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce new Rule 39 (Market Data Restrictions and Liability Limitations) into its rules in order to regulate the receipt and use of the market data that the Exchange, with the assistance of various other parties, makes available on the Floor of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange uses its facilities to make various categories of market information—including last sale prices, bids and offers, related sizes and the like—available on the Exchange Floor for use by Exchange members in the course of performing their membership functions. Typically, the Exchange enters into arrangements with traditional vendors of market data services in order to have the vendors assist the Exchange in making market information available on the Floor. The Exchange proposes to add a new Rule 39 (Market Data Restrictions and Liability Limitations) to regulate the provision of market data to the Floor of the Exchange through Exchange facilities. The proposed rule seeks to accomplish three purposes:

1. It would exculpate the Exchange, market data vendors, market data sources and others that assist in the process of making market information available on the Floor through the facilities of the Exchange from members' claims of liability as the result of the dissemination of inaccurate or delayed information or the omission of information. The exculpation applies in respect of any such party's negligence or any cause beyond its reasonable control. It would not exculpate any party for gross negligence or willful misconduct.

2. It would clarify that each of the derivative sources of market data retains proprietary rights to the market data that it makes available.

3. It would prohibit members from redistributing the market data that the Exchange makes available on the Floor to any other person, except for the occasional furnishing of limited amounts of information in the regular course of a member's securities business on the Floor.

The Exchange considers its members' easy and complete access to market information on the Floor of the Exchange to constitute a singularly important aspect of the Exchange's trading environment. The Exchange believes such access is essential to the process of making markets and to the capital-raising process. By providing basic protections from liability to market data vendors, sources of market data and those that assist in the process of making market data available, the proposed rule change will allow each of those entities to perform their respective roles. As a result, the Exchange believes the proposed rule change would greatly facilitate the Exchange's ability to enter into working relationships with those entities and improve the Exchange's ability to place market information in the hands of its members.

The Exchange believes the proposed legal protections would act as surrogates for direct contractual relationships between the Exchange and/or vendors on the one hand and Exchange members that receive access to market data on the Floor on the other. That is, the Exchange traditionally requires professional end users of the market data that is made available under the CTA Plan and the CQ Plan to execute contracts. Similarly, vendors traditionally require each of their market data service subscribers to execute contracts. Each such contract typically contains counterpart provisions to the ones that the Exchange is proposing for its new rule.[3] By placing those provisions into an Exchange rule, the Exchange intends to obviate the need for those contracts.

In addition, the adoption of rules designed to protect a securities market's agents and contractors and to induce those agents and contractors to assist the securities markets in providing its traditional services is nothing new. For instance, Exchange rules presently contain similar exculpatory provisions for the calculation of index values[4] and for basket information.[5] Other equity markets have similar protections in their rules.[6]

The Exchange believes that Article II, Section 6 (Use of Exchange Facilities) of the Exchange Constitution already exculpates the Exchange from liability for damages that grow out of the use or enjoyment of the Exchange's facilities. The Exchange has always deemed that Constitutional provision to implicitly protect the Exchange's agents and contractors in the same manner as it protects the Exchange and the proposed rule change is intended to supplement, not limit, the applicability of that provision. The Exchange believes the proposed rule change would merely codify and expound upon that reading of the provision and clarify the Exchange's interpretation.

[3] For instance, the proposed provisions mimic clauses found in the standard form of agreement that the Exchange and the other CTA Plan Participants enter into with vendors and subscribers. The Commission has approved contracts containing those provisions on several occasions. *See*, for example, the form of vendor contract contained in *Exhibit C* to the Second Restatement of the CTA Plan, which the Commission approved last year. (Release No. 34–37191; File No. SR–CTA/CQ–96–1; May 9, 1996.)

[4] *See* Paragraph (b) of Exchange Rule 702 (Rights and Obligations of Holders and Writers).

[5] *See* Exchange Rule 813 (Limitation of Liability).

[6] *See*, for instance, American Stock Exchange Rules 902C and 1003 and Chicago Board Options Exchange Rules 6.7, 7.11 and 23.14.

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[7] that an exchange have rules that are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. *Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interest persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. An submissions should refer to File No. SR–NYSE–97–23 and should be submitted by September 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–22058 Filed 8–19–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38933; File No. SR–PCX–97–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reduction in Minimum Size for Closing Transactions in FLEX Equity Options

August 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1991).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

Currently, Rule 8.102(d)(3) imposes a 100 contract minimum on all transactions in FLEX Equity Options unless the transaction is for the entire remaining position in the account. The Exchange believes that the current minimum value size of closing and exercise transactions in FLEX Equity Options is too large to accommodate the needs of certain members firms and their customers.[3] These firms may purchase 100 or more FLEX Equity Options in an opening transaction for a single firm account in which more than one of the firm's clients have an interest. If one of these clients wants to redeem its investment in the account, the firm likely will want to engage in a closing or exercise transaction in order to reduce the account's position in those FLEX Equity Options by the number being redeemed. Thus, if the redeeming client's interest is less than 100 FLEX Equity Options and does not represent the total remaining position in the account, Rule 8.102(d)(3), as it stands presently, prevents the firm from closing or exercising positions of this size.

The Exchange believes that the proposed rule change would remedy the situation described above, by permitting an order to close or exercise as few as

[3] The Exchange notes that the existing customer base for FLEX Equity Options includes both institutional investors, in particular mutual funds, money managers and insurance companies, and high net worth individuals who meet the ''sophisticated investor'' criteria applied to various clients by Exchange member firms.

25 FLEX Equity Option contracts. The corresponding change to Rule 8.102(d)(4), which governs the minimum size for FLEX Equity Quotas that may be entered in response to Request for Quotes, is necessary in order to provide the liquidity needed to facilitate the execution of closing orders between 25 and 99 FLEX Equity Option contracts that would be permitted by the proposed amendment to Rule 8.102(d)(3).[4]

The Exchange represents that it will issue a circular that (1) describes the new rule; and (2) reminds all members and member firms of their continuing responsibility to ensure that FLEX Equity Options are utilized only by sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size.[5] The Exchange also will submit surveillance procedures for the Commission's review.[6] The Exchange believes these procedures will help to ensure that only such sophisticated investors are utilizing this product.

The Exchange believes by providing firms and their customers greater flexibility to trade FLEX Equity Options by lowering from 100 to 25 the minimum number of contracts required for a closing transaction, for exercises, and for FLEX Quotes responsive to a Request for Quotes, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[7] by removing impediments to and perfecting the mechanism of a free and open market in securities and other serving to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[4] The Commission notes that the minimum size for an opening transaction in a Request for Quotes is 250 contracts for any FLEX series in which there is no open interest, and 100 contracts in any currently opened FLEX series. *See* PCX Rule 8.102(d)(2) and (3).

[5] *See* File No. SR–PCX–97–25.

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–25 and should be submitted by September 10, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested accelerated effectiveness of this proposed rule change. The Commission has reviewed carefully the PCX's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act,[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act[10] because it should facilitate transactions in securities in FLEX Equity Options consistent with investor protection and the public interest.

The Commission believes that the Exchange's proposal to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercise of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes, reasonably addresses the Exchange's desire to meet the demands of sophisticated investors, portfolio managers and other institutional investors who may want to use FLEX Equity Options, but find the minimum size requirements for closing transactions too restrictive for their investment needs and may therefore choose to use the over-the-counter market. As previously noted by the Commission, the benefits of the Exchange's FLEX options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation for all contracts traded on the Exchange.[11]

The Commission notes that market participants wanting to execute an opening transaction in a particular series of FLEX Equity Options will continue to be required to meet the 250 or 100 minimum contract requirement.[12] The Commission believes that this should help to ensure that transactions in FLEX Equity Options remain of substantial size and, therefore, the product is geared to an institutional, rather than a retail market. In originally approving FLEX Equity Options, the Commission stated that the minimum value sizes for opening transactions in FLEX Equity Options are designed to appeal to institutional investors and it is unlikely that most retail investors would be able to engage in options transactions at that size.[13]

The Commission further notes that, in approving the proposal, adequate surveillance guidelines should be in place to ensure that only sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size are utilizing this product. The Commission's staff has reviewed the PCX's surveillance program and believes it provides a reasonable framework in which to monitor such investor open interest.

The Commission requests, however, that the Exchange provide a report to the Commission's Division of Market Regulation describing the nature of investor participation (i.e., retail vs. institutional) in FLEX Equity Options for one year from the implementation date for the rule change.[14] If the

[8] 15 U.S.C. 78f.

[9] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (''Original FLEX Equity Option Approval Order'').

[12] *See supra* note 4.

[13] *See* Original FLEX Equity Option Approval Order, *supra* note 11.

[14] The Commission notes that the PCX has previously committed to providing the Commission with a report on the usage of FLEX Equity Options

Exchange determines in the interim that the proposed rule change has resulted in a pattern of retail investor participation in FLEX Equity Options, it should notify the Commission's Division of Market Regulation to determine if the minimum closing transaction sizes should be restored to the original levels.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is identical to a proposal of the Chicago Board Options Exchange (''CBOE'') that was recently approved by the Commission.[15] Therefore, the Commission believes that the proposal raises no new regulatory issues. In addition, the Commission notes that public comments were solicited on the CBOE's proposal for the full statutory period and no comments were received. Finally, as the proposal conforms the rules of the Exchange's FLEX Equity options market to that of another exchange offering FLEX products, the Commission believes that the proposed rule will allow the PCX to compete more effectively in the FLEX options market. Based on the above, the Commission believes that granting accelerated approval of the proposed rule change is consistent with Sections 6 and 19(b)(2) of the Act.[16]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PCX–97–25) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–22059 Filed 8–19–97; 8:45 am]

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after the first year of trading. *See* Original FLEX Equity Option Approval Order, *supra* note 11. Because that report is due to the Commission shortly and the changes adopted herein could potentially change the nature of investor participation, the Commission requests that the Exchange update its report one year from the implementation date of this rule change.

[15] *See* Securities Exchange Act Release No. 38839 (July 15, 1997), 62 FR 39040 (July 21, 1997) (order approving File No. SR–CBOE–97–10).

[16] 15 U.S.C. 78f and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 18, 1997. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Business Information Center Customer Satisfaction Survey.

Form No: 1916.

Frequency: On Occasion.

Description of Respondents: Small Business Clients.

Annual Responses: 22,500.

Annual Burden: 225

Dated: August 15, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–22037 Filed 8–19–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Programs (SSA/States Wage, Unemployment Compensation (UC) Files—SSA Match Numbers 1140, 1142)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Programs.

SUMMARY: In accordance with the provisions of the Privacy Act, this notice announces a computer matching program that SSA plans to conduct with the States.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935, or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain Data Integrity Board approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 7, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Notice of Computer Matching Programs, States' Income Eligibility Verification System Records (Wage, Unemployment Compensation (UC) Files) With the Social Security Administration (SSA)

A. Participating Agencies

SSA and the States.

B. Purpose of the Matching Programs

Section 1137 of the Social Security Act (the Act) requires individual States to have in effect an income and eligibility verification system which meets certain requirements. Among other requirements, such a State verification system must provide for certain exchanges of information when relevant information may be of use in establishing or verifying eligibility or benefit amounts under benefit programs affected by the statute.

The purpose of these matching programs is to enable SSA to implement procedures consistent with requirements of section 1137(a)(4)(B) of the Act. The agreements with the States will describe the conditions under which SSA and the States agree to disclose information to each other relating to the eligibility for, and payment of, Supplemental Security Income (SSI) benefits.

C. Authority for Conducting the Matching Programs

Section 1137 of the Act (42 U.S.C. 1320b–7). Section 6103(1) of the Internal Revenue Code (26 U.S.C. 6103(1)).

D. Categories of Records and Individuals Covered by the Matching Programs

SSA will provide the States with a finder file containing names and other identifying information of recipients from SSA's SSI benefit rolls. This information will be matched by each State with its wage and UC files and a reply file of matched records will be furnished to SSA. Upon receipt of a State's reply file, SSA will match the names from the State file with the names on SSA's records to ensure that the State data pertain to the relevant SSI recipients and to determine whether the income levels of the recipients are consistent with statutory and regulatory limitations under the SSI program.

SSA and the States may exchange information electronically through the File Transfer Management System (FTMS). Cartridge or magnetic tape will be used in the event FTMS is inoperable.

E. Inclusive Dates of the Match

Individual matching programs covered by this notice shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB), 30 days after publication of this notice in the **Federal Register**, or upon the signature of the individual agreement by representatives of the parties to the agreement, whichever date is later. The matching programs will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 97–22041 Filed 8–19–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2580]

Bureau of Political-Military Affairs; Imposition of Missile Proliferation Sanctions Against Entities in North Korea

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that entities in North Korea have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979 (as carried out under Executive Order 12424 of August 19, 1994), as amended.

EFFECTIVE DATE: August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State, (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the ''Export Administration Act of 1979''), and Executive Order 12851 of June 11, 1993, the United States Government determined on August 6, 1997, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i) on these entities and their sub-units and successors:

1. Lyongaksan General Trading Corporation (North Korea).

2. Korea Pugang Trading Corporation (North Korea).

Accordingly, the following sanctions are being imposed on these entities and their sub-units and successors:

(A) New individual licenses for export to the entities described above of Missile Technology Control Regime (MTCR) equipment or technology controlled pursuant to the Export Administration Act of 1979 will be denied for two years; and

(B) New licenses for export to the entities described above of MTCR equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(C) No United States Government contracts relating to MTCR equipment or technology and involving the entities described above will be entered into for two years.

Additionally, because of the definition of ''person'' in section 74(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(8)(B)) and North Korea's status as a country with a non-market economy that is not a former member of the Warsaw Pact, the following sanctions must be applied to all activities of the North Korean government relating to the development or production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New licenses for export to the government activities described above of MTCR equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(B) No U.S. government contract relating to MTCR equipment or technology and involving the government activities described above will be entered into for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

These measures will be implemented by the responsible agencies as provided

in Executive Order 12851 of June 11, 1993.

Dated: August 6, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–22077 Filed 8–19–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2591]

Bureau of Political-Military Affairs

AGENCY: Department of State.

ACTION: Determination Under the Arms Export Control Act.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice hereby is given that the Under Secretary of State for Arms Control and International Security Affairs has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: August 6, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–22078 Filed 8–19–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice No. 2590]

Bureau of Oceans, Environment and Science; Public Meeting on an International Agreement on Prior Informed Consent for Certain Hazardous Chemicals and Pesticides

SUMMARY: This public meeting will provide an overview of ongoing negotiations through the U.N. Environment Program and the Food and Agriculture Organization to develop a binding agreement on the application of a prior informed consent procedure for certain hazardous chemicals and pesticides. The meeting will take place from 2:00 to 4:00 p.m. on September 24 in Room 6909, State Department, 2201 C Street Northwest, Washington, D.C. Attendees should use the entrance at C Street, and should provide Eunice Mourning (202–647–9266) with their date of birth and social security number by noon on September 23. Attendees should bring picture identification.

For further information, please contact Mr. Trigg Talley, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington, D.C. 20520. Phone 202–647–5808, fax 202–647–5947.

SUPPLEMENTARY INFORMATION: The United States, through an interagency working group chaired by the State Department, is involved in negotiations through the U.N. Food and Agriculture Organization (FAO) and the U.N. Environment Programme (UNEP) on an agreement that would set into place a procedure for prior informed consent (PIC) for trade in certain especially hazardous chemicals and pesticides. Three negotiating sessions have taken place thus far, with two more sessions planned.

The agreement would make binding a currently voluntary scheme contained in the FAO International Code of Conduct on the Distribution and Use of Pesticides and the UNEP London Guidelines for the Exchange of Information on Chemicals in International Trade. The PIC procedure was developed in recognition of the fact that many countries in the developing world have inadequate capacity to generate information necessary to make decisions regarding how to effectively manage risks of especially hazardous chemicals, and in certain cases to ensure adequate compliance with risk management decisions. The procedure assists countries in learning more about the characteristics of certain especially hazardous chemicals that may be shipped to them, initiates a decision making process on the future import of these chemicals by the countries themselves, and facilitates the dissemination of this decision to other countries.

The voluntary PIC regime has been in place since 1991. 151 countries participate in the current scheme, which is jointly administered by the Plant Protection Division of FAO (for pesticides) and the UNEP International Registry for Potentially Toxic Chemicals (for other chemicals). Most major industrial chemical and pesticide associations support and participate in the system. Under the procedure, each country establishes a designated national authority to administer the procedure. In the United States, the Environmental Protection Agency's Assistant Administrator for Pesticides, Prevention and Toxic Substances acts as the designated national authority.

Chemicals eligible for the PIC procedure include those which have been banned or severely restricted by participating countries, as well as certain acutely hazardous pesticides which—even though they are not eligible on the basis of bans or severe restrictions—are likely to pose particular problems in developing countries lacking the ability to impose the kinds of rigorous handling requirements available in developed countries.

Under the PIC procedure, countries notify the UNEP/FAO secretariat of domestic control actions to ban or severely restrict chemicals. A UNEP/FAO Group of Experts meets annually to prioritize among those chemicals eligible for the PIC procedure, and gives direction regarding the development of Decision Guidance Documents (DGDs) to provide information relating to each of the chemicals to be included in the procedure. DGDs describe the chemical and associated toxicological properties, as well as government control actions and the reasons for them. Once approved, the Decision Guidance Documents are circulated to participating countries for decision. In their decision, countries indicate whether they will permit use and importation, prohibit use and importation, or permit importation only under specified conditions. The response may be final, or countries may provide an interim response. Importing countries are expected to ensure that their decisions are applied to all sources of import and to domestic production for domestic use; exporting countries are expected to ensure that exports do not occur contrary to the decisions of importing countries. So far, 16 chemicals have been included in the procedure, and DGDs for a number of others are under development.

In order to enhance participation in the system, governments agreed in 1994 through FAO and UNEP to undertake negotiations to replace the voluntary process with a treaty-based regime. Negotiations have been underway since 1996, with three negotiating sessions occurring so far. Two more sessions are planned, with one session October 20–24, 1997, and one for January 1998. A signing conference is planned for sometime next spring.

The current negotiating text, as well as more complete information on the voluntary procedure and the negotiations generally, is located on the internet on the PIC Home Page (http://irptc.unep.ch/pic/h2.html), which can also be accessed through the UNEP Home Page (www.unep.ch).

The United States has advocated that the binding agreement reflect the scope and intent of the voluntary prior informed consent procedure. We have advocated greater formality in the procedures for consideration of additional chemicals to the list, reflecting the more formal nature of the

agreement. The Administration expects that the Agreement will be a treaty, which will be submitted to the Senate for advice and consent necessary for ratification, and that certain changes would need to be made to Section 12 of the Toxic Substances Control Act and Section 17 of the Federal Insecticide, Fungicide and Rodenticide Act to meet an obligation to ensure that exports of PIC-listed chemicals do not occur contrary to decisions regarding those chemicals by importing countries.

In the negotiations, other countries have made proposals which would make eligible a somewhat broader range of chemicals than under the voluntary guidelines, and which would include information exchange provisions which, if accepted, could require other changes to TSCA and FIFRA, as well as the Federal Hazardous Substances Act. In particular, there are proposals to include provisions requiring notifications for exports of chemicals which are banned or severely restricted under national law (Article 11 of the proposed text), as well as certain proposals regarding labeling and material safety data sheets for chemicals (Article 12 of the proposed text).

The Department of State is issuing this notice to help ensure that potentially affected parties are aware of and knowledgeable about the parameters of these negotiations. In the future, we will be contacting interested organizations about planned briefings by mail or fax. Those organizations which cannot attend the meeting, but wish to remain informed, should provide Mr. Trigg Talley of the Department of State with their address, telephone and fax numbers.

Dated: August 14, 1997.

Trigg Talley,

Foreign Affairs Officer, Office of Environmental Policy.

[FR Doc. 97–22025 Filed 8–19–97; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8554

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8554, Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before October 20, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545–0946.

Form Number: Form 8554.

Abstract: The information obtained from Form 8554 relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) to practice before the Internal Revenue Service. The information will be used by the Director of Practice to determine the qualifications of individuals who apply for renewal of enrollment.

Current Actions: Changes to Form 8554.

Line 5a was rewritten to clarify the circumstances for earning continuing professional education credits by passing the Special Enrollment Examination. Also, Item D was deleted because the information is no longer needed.

Affected Public: Individuals or households.

Estimated Number of Respondents: 39,500.

Estimated Time Per Respondent: 1 hour, 12 minutes.

Estimated Total Annual Burden Hours: 47,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–22018 Filed 8–19–97; 8:45am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the United States Postal Service

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

Notice is hereby given that the Department of Veterans Affairs (VA) and the United States Postal Service (USPS) propose to conduct a computer matching program. The purpose of the program is to identify and locate USPS employees who owe delinquent debts to the Federal Government as a result of their participation in benefit programs

administered by VA. Once identified and located, VA will pursue collection of debts through voluntary payments. If such payments are not forthcoming, VA may request USPS to offset up to 15 percent of the employees' disposable pay as authorized under the provisions of the Debt Collection Act of 1982.

The legal authority for undertaking this matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 (Collection and Compromise) and 5 U.S.C. 5514 (Installment Deduction for Indebtedness). These statutes authorize Federal agencies to offset a Federal employee's salary as a means of satisfying delinquent debts owed the United States. VA and USPS have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1974, as amended (15 U.S.C. 552a(o)). USPS will act as recipient (i.e., matching) agency. VA will provide a tape extract to USPS that contains the name and social security number (SSN) of each record subject. USPS will compare the tape extract against its database of employee records, establishing ''hits'' (i.e., individuals common to both tapes) on the basis of matched SSN's. For each hit, USPS will disclose to VA the following information: name, SSN, home address and employee type (permanent or temporary).

Records To Be Matched: The systems of records maintained by the respective agencies from which records will be disclosed for the purpose of this computer match are as follows:

USPS: Finance Records—Payroll System (USPS 050.020) containing records of approximately 800,000 employees. Disclosure will be made under routine use of 24 of that system, a full description of which was last published at 57 FR 57515 (December 4, 1992).

VA: Accounts Receivable Records—VA (88VA20A6) containing records of approximately 300,000 debtors. Disclosure will be made under routine use No. 7 of that system, a full description of which was last published in 61 FR 60148 on November 26, 1996.

The matching program is expected to begin on or about September 19, 1997, and continue in effect for 18 months. The agreement governing the matching program and, thus, the matching program, may be extended an additional 12 months with the respective approval of VA's and USPS' Data Integrity Boards. Such extension must occur within three months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, room 1154, Washington, DC 20420. All relevant material received before September 19, 1997, will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, NW, Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT:

Mark Gottsacker, Debt Management Center (389/00A), Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)). A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: August 5, 1997.

Hershel Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–22007 Filed 8–19–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
August 20, 1997

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 administrative, programmatic, and financial requirements attendant to Fiscal Year 1998 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until September 19, 1997.

ADDRESSES: Comments should be sent to the State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314.

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 quality of justice in the State courts of the United States.

Status of FY 1998 Appropriations

The Senate has approved an FY 1998 appropriation of $13.55 million for the Institute. The House Appropriations Committee has approved a $3 million appropriation. The grant program proposed in this Guideline and the funding targets noted for specific programs may be modified in the Final Grant Guideline after final Congressional action on the appropriation.

Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers five different categories of grants. The types of grants available in FY 1998 and the funding cycles for each program are described below:

Project Grants

These grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Except for ''Single Jurisdiction'' project grants awarded under section II.C. (see below), project grants are intended to support innovative projects of national significance. As provided in section V. of the Guideline, project grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in Section VI.C., the Board may make an ''accelerated'' 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 about the operation of the project would be provided in an application.

The FY 1998 mailing deadline for project grant concept papers is November 24, 1997. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet in late February, 1998 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.

Special funding cycles are established for concept papers that follow up on the Symposium on the Future of the Juvenile Courts (see section II.B.2.h.), the National Conference on Full Faith and Credit (see section II.B.2.i.), and the National Sentencing Symposium (see section II.B.2.k.); and papers that implement the national agenda on assuring prompt and affordable justice (see section II.B.2.e.). Those concept papers must be submitted by March 12, 1998.

Single Jurisdiction Project Grants

Section II.C. of the Guideline allocates funds for two types of ''Single Jurisdiction'' grants.

Section II.C.1. reserves up to $300,000 for Projects Addressing a Critical Need of a Single State or Local Jurisdiction. To receive a grant under this program, an applicant must demonstrate that (1) the proposed project is essential to meeting a critical need of the jurisdiction and (2) the need cannot be met solely with State and local resources within the foreseeable future. Applicants are encouraged to submit proposals to replicate approaches or programs that have been evaluated as effective under an SJI grant. Examples of projects that could be replicated are listed in Appendix IV. See ''Issues for Comment'' below, soliciting public comment about the continuation of the Replication grant program.

Section II.C.2. reserves up to $400,000 for 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.

Letters of application for a Technical Assistance grant may be submitted at any time. Applicants submitting letters between June 14 and September 30, 1997 will be notified of the Board's decision by December 5, 1997; those submitting letters between October 1, 1997 and January 16, 1998 will be notified by March 27, 1998; those submitting letters between January 17, 1998 and March 13, 1998 will be notified by May 29, 1998; and those submitting letters between March 14, 1998 and June 12, 1998 will be notified by August 28, 1998. Subject to the availability of appropriations in FY 1998, applicants submitting letters between June 13 and September 30, 1998 will be notified of the Board's decision by December 18, 1998.

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 $100,000 for these grants in FY 1998. See section II.B.2.b.ii.

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.ii.(c). See ''Issues for Comment'' below, soliciting public comment about the continuation of the Curriculum Adaptation grant program.

Scholarships

The Guideline allocates up to $200,000 of FY 1998 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.iii.

The Guideline establishes four deadlines for scholarship requests: October 1, 1997 for training programs beginning between January 1 and March 31, 1998; January 7, 1998 for programs beginning between April 1 and June 30, 1998; April 1, 1998 for programs beginning between July 1 and September 30, 1998; and July 1, 1998 for programs beginning between October 1 and December 31, 1998.

Renewal Grants

There are two types of renewal grants available from SJI: Continuation grants (see sections III.G., V.C. and D., and IX.A.) and On-going support grants (see sections III.H., V.C. and D., and IX.B.). Continuation grants are intended to enhance the specific program or service begun during the initial grant period. 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 approximately 25% of the total amount projected to be available for grants in FY 1998. 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 includes 12 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts this year. The selection of these categories was based on the Board and staff's experience and observations over the past year, the recommendations received from judges, court managers, lawyers, members of the public, and other groups interested in the administration of justice, and the issues identified in recent years' concept papers and applications.

Section II.B. of the Proposed Guideline includes the following Special Interest categories:

Improving Public Confidence in the Courts;
Education and Training for Judges and Other Key Court Personnel (this category includes Development of Innovative Educational Programs, Curriculum Adaptation grants, Scholarships for Judges and Key Court Personnel, and National Conferences);
Dispute Resolution and the Courts;
Application of Technology;
Court Management, Financing, and Planning;
Resolution of Current Evidentiary Issues;
Substance Abuse and the Courts;
Children and Families in Court;
Improving the Courts' Response to Domestic Violence;
Improving Sentencing Practices;
Improving Court Security; and
The Relationship Between State and Federal Courts.

Conferences

The Institute is soliciting proposals to conduct two major national conferences: A National Symposium on the Future of Judicial Education, and a National Conference on Unrepresented Litigants in Court. See section II.B.2.b.iv.

Issues for Comment

SJI requests comment on three issues: Consultant rates, and the continuation of the Curriculum Adaptation and Replication grant programs.

Consultant Rates.

The Institute specifically seeks comment on the rates that should be paid to consultants working under SJI grants. The Institute currently employs a four-tiered approach to examining and approving consultant rates:

1. SJI staff may approve rates of up to $300 a day based upon the applicant's demonstration that the consultant is qualified to perform the work in question.

2. A consultant seeking a rate of between $301 and $600 a day must complete a Consultant Rate Questionnaire that demonstrates that two organizations have paid the consultant a rate equivalent to, or higher than the requested rate. SJI staff may approve the rate upon verification of the prior rates.

3. A consultant seeking a rate of $601 to $900 a day must also complete a Consultant Rate Questionnaire, and have the rate approved by a committee of the Board of Directors.

4. Rates in excess of $900 a day will not be approved.

The Board of Directors' interest in re-examining the present policy is motivated primarily by a concern that consultants who perform work in the public sector, and are paid from Federally appropriated funds, should not ordinarily be compensated at the higher levels that may be available in the private sector. In addressing the issue of consultant compensation, the Board is especially mindful of the fact that practicing lawyers are expected to provide a certain level of pro bono (uncompensated) service in every jurisdiction, and of the fact that the members of the SJI Board themselves annually donate the equivalent of approximately 30 days of their own time to the Institute without compensation. The Board also recognizes, however, that the success of SJI-supported projects is often attributable to the contributions of consultants, and appreciates the fact that many consultants are willing to forego the higher compensation they may receive in the private sector in order to serve the public sector.

In re-examining the present policy, the Board would like public comment on this issue generally, as well as on the following specific issues:

(1) Should SJI lower the maximum consultant rate that can be paid from grant funds to below $900 a day? If so, what is the highest rate that should be permitted? Are there certain criteria that would justify the top rate, wherever it is set?

(2) Should practicing lawyers, as well as other legal and court officials, be expected to provide their services to SJI-supported grants without compensation? What circumstances might justify an exception to this expectation?

(3) Are there other approaches that might better balance SJI's need to exercise financial restraint with its interest in encouraging the highest quality experts to work on Institute-supported projects?

Curriculum Adaptation Grants

The number of Curriculum Adaptation requests submitted in recent years has dropped sharply, from 17 in FY 1995 to 4 in FY 1997. In response to the decline in demand, the amount allocated for CA grants in the Proposed Guideline is $100,000, a $75,000 reduction from the amount set aside in FY 1997. The Board invites comment, especially from State judicial educators, about whether the program should be discontinued or whether it might be modified in some way to increase its usefulness.

Replication Grants. Last fiscal year, SJI added the Replication grant program to the Guideline. The program permitted State and local courts to request up to $30,000 to adapt programs, procedures, or strategies that have been evaluated as successes under prior SJI grants. No court requested a Replication grant this year. The Proposed Guideline continues the program, but drops the $30,000 limitation, which some observers believe may be too low to accomplish the goals of the program. The Board invites comment, particularly from State and local courts, about whether the program should be discontinued, modified in the way proposed, or modified in some other way to attract more applications.

Recommendations to Grant Writers

Over the past 11 years, Institute staff have reviewed approximately 3,300 concept papers and 1,600 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, 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 present the criteria that will be used to evaluate the project's effectiveness; identify program elements which will require further modification; and describe 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 at least 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 application requests $100,000 or more. 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, applicants should 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, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page=$375.00). Supply and expense estimates offered simply as ''based on experience'' are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What travel regulations apply to the budget estimates? Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project.

The budget narrative also 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 and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site may be used. Applicants should arrange travel so as to be able to take advantage of advance-purchase price discounts whenever possible.

13. What meeting costs may be covered with grant funds? SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals. However, they cannot be used to reimburse the cost of coffee or other types of refreshment breaks, or for alcoholic beverages.

14. 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 Guideline. On the basis of monitoring more than 1,300 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. 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? Recipients of a continuation or on-going support 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 grant and each yearly grant under an on-going support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an on-going support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

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 Program Manager 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 Grants Financial Manager listed in the award letter.

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. Special conditions may be 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 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? The basic procedures are the same for any grant. A continuation grant or the yearly grant under an on-going support award should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant or a yearly increment under an on-going support award should be designated as number one, the second as number two, and so on through the final payment request for that grant.

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. 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.

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.

During the 90 days following the end of the award period, 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, Office of Management and Budget (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.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees that 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.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 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 Circulars 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.) A copy of the above-noted circulars may be obtained by calling OMB at (202) 395–7250.

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 the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1996 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 minimum A–133 threshold would not be met. 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 Circulars 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. of the Grant Guideline.

The following Grant Guideline is proposed by the State Justice Institute for FY 1998:

State Justice Institute Grant Guideline

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I. Background

The 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 11-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 1998, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated 12 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, the Judicial Training and Research for Child Custody Litigation Act, and the International Parental Kidnapping Crime Act.

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 relates to and affects 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;

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. 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 such as 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 1998, 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 by developing 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 demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process, and test innovative methods for increasing the public's confidence in the State courts.

The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

- Improve service to individual litigants and trial participants, including innovative methods for handling cases involving unrepresented litigants fairly and effectively; (See also section II.B.2.b.iv.(b) regarding a National Conference on Unrepresented Litigants in the Courts.)
- Test methods for more clearly and effectively communicating information to litigants and the public about judicial decisions, the trial and appellate court process, and court operations;
- Eliminate race, ethnic, and gender bias in the courts;
- Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to inform judges about the effects of recent Federal and State legislation regarding immigrants; 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; 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;
- Demonstrate and evaluate approaches courts can use to implement the concept of restorative justice, including methods for involving the community in the sentencing process,

such as community impact statements, community oversight of compliance with community service and probation conditions, or other innovative court-community links focused on the sentencing process;

• Test the impact of methods for improving juror comprehension in criminal and civil cases, such as use of specially qualified juries in complex cases, delivery of instructions throughout the trial, testimony by court-appointed neutral experts, and access to technology in the jury room to permit review of computerized exhibits of evidence presented in the case;

• Determine the incidence and causes of jury nullification and identify appropriate measures that judges can take to induce jurors to follow the law;

• Assess the impact of live television coverage of trials on court proceedings, public understanding, and fairness to litigants, and develop materials to assist jurors in dealing with the media during or following a trial.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases.

Previous SJI-supported projects that address these issues include:

Enhancing Court-Community Relationships: A National Town Hall Meeting Videoconference and projects to implement the action plans developed at the conference; educational materials for court employees on serving the public; surveys and focus groups to identify concerns about the courts and assess how courts are serving the needs of the public; a demonstration of the use of community volunteers to monitor adult probationers and to monitor guardianships; evaluation of community-based court programs in New York City; and guidelines for court-annexed day-care systems;

Serving Unrepresented Litigants: Preparing guidebooks for court-based programs to assist pro se litigants and to respond to individuals and groups unwilling to comply with legal and administrative procedures; developing local and Statewide self-service centers, touchscreen computer kiosks, videotapes, and written materials to assist unrepresented litigants; assessing effective and efficient methods for providing legal representation to indigent parties in criminal and family cases; and examining the methods courts in rural communities can use to assure access and fairness for immigrants;

Eliminating Race and Ethnic Bias in the Courts: Presenting a National Conference on Eliminating Race and Ethnic Bias in the Courts and supporting projects to implement the action plans developed at the conference; examining the applicability of various dispute resolution procedures to different cultural groups; and developing educational programs and materials for judges and court staff on diversity and related issues;

Facilitating the Use of Qualified Court Interpreters: Preparing a manual and other materials for managing and coordinating court interpretation services; developing basic and graduate level curricula and other materials for training and assisting court interpreters; and assessing the feasibility and effectiveness of interpreting in court via the telephone;

Improving Jury Service and Jury System Management: Developing a manual for implementing innovations in jury selection, use, and management; preparing a guide for making juries accessible to persons with disabilities; documenting methods for reducing juror stress; and assessing the effect of allowing jurors to discuss the evidence prior to the deliberations on the verdict.

b. Education and training for judges and other key court personnel. The Institute is interested in supporting an array of projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into four subsections: (i) Innovative Educational Programs; (ii) Curriculum Adaptation Projects; (iii) Scholarships; and (iv) National Conferences.

i. Innovative Educational Programs. This category includes support for the development and testing of educational programs for judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire; incorporate adult education principles and multiple teaching/learning methods; and result in the development of a curriculum as defined in section III.J.

(a) The Institute is particularly interested in the development of education programs that:

• Include innovative self-directed learning packages for use by judges and court personnel, and distance-learning approaches to assist those who do not have ready access to classroom-centered programs. These packages and approaches should include the appropriate use of various media and technologies such as Internet-based programming, interactive CD–ROM or floppy disk-based programs, videos, or other audio and visual media, supported by written materials or manuals. They also should include a meaningful program evaluation and a self-evaluation process that assesses pre- and post-program knowledge and skills; (See also section II.B.2.b.iv.(a) inviting proposals for a National Symposium on the Future of Court Education.)

• Familiarize faculty with the effective use of instructional technology including methods for effectively presenting information through distance learning approaches including the Internet, videos, and satellite teleconferences;

• Assist local courts, State court systems, and court systems in a geographic region to develop or enhance a comprehensive program of continuing education, training, and career development for judges and court personnel as an integral part of court operations;

• Test the effectiveness of including experiential instructional approaches in court education programs such as field studies and use of community resources; and

• Encourage intergovernmental teambuilding, collaboration, and planning among the judicial, executive, and legislative branches of government, or courts within a metropolitan area or multi-State region; (See also section II.B.2.e.ii., inviting proposals to support teambuilding among courts, criminal justice agencies and service providers.)

(b) The Institute also is interested in supporting the development and testing of curricula on issues of critical importance to the courts, including those listed in the other Special Interest categories described in this Chapter.

ii. Curriculum Adaptation Projects.

(a) Description of the Program. The Board is reserving up to $100,000 to provide support for projects that adapt and implement model curricula previously developed with SJI support. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix III.

The goal of the Curriculum Adaptation program is to provide State and local courts with sufficient support to modify a model curriculum, course module, or national or regional conference program developed with SJI funds to meet a State's or local

jurisdiction's educational needs. Generally, it is anticipated that the adapted curriculum would become part of the grantee's ongoing educational offerings, and that local instructors would receive the training needed to enable them to make future presentations of the curriculum.

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 in an amount equal to at least 50% of the grant amount requested.

(b) Review Criteria. Curriculum Adaptation grants will be awarded on the basis of criteria including: The goals and objectives of the proposed project; the need for outside funding to support the program; the appropriateness of the educational approach in achieving the project's educational objectives; the likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making curriculum adaptation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with 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.

(c) Application Procedures. In lieu of concept papers and formal applications, applicants should submit a detailed letter and three photocopies. Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information to assure that each of the review criteria listed above is addressed:

- Project Description. What is the title of the model curriculum to be adapted and who developed it? What are the project's goals and learning objectives? Why is this education program needed at the present time? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, and content? Who will be responsible for adapting the model curriculum? Who will the participants be, how many will there 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)?
- Need for Funding. Why are sufficient State or local resources unavailable to 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 of Implementation. What is the proposed timeline for modifying and presenting the program? Who would serve as faculty and how were they selected? What measures will be taken to facilitate subsequent presentations of the adapted program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not necessary; however, the results of any evaluation should be included in the final report.)
- 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. Applicants should attach a copy of budget Form E (see Appendix V) and a budget narrative (see Section VII.B.) that describes the basis for the computation of all project-related costs and the source of the match offered.
- Chief Justice's Concurrence. Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix VI.)

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. Grant funds will be available only after Committee approval, and negotiation of the final terms of the grant.

(d) Grantee Responsibilities. A recipient of a Curriculum Adaptation grant must:

(1) Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L.);

(2) Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the ''SJI'' logo and a disclaimer paragraph (See section X.Q.); and

(3) 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 includes any evaluation results and explains how the grantee intends to present the program in the future.

iii. Scholarships for Judges and Court Personnel. The Institute is reserving up to $200,000 to support a scholarship program for State court judges and court managers.

(a) Program Description/Scholarship Amounts. The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending 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 transportation up to a maximum total of $1,500 per scholarship. (Transportation expenses include round-trip coach airfare or train fare. Recipients who drive to the site of the program may receive $.31/mile up to the amount of the advanced purchase round-trip airfare between their home and the program site.) 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 applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

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 can be awarded

only to full-time judges of State or local trial and appellate courts; full-time professional, State or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not 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 V). An applicant may apply for a scholarship for only one educational program during any one application cycle. Applications must be submitted by:

October 1, 1997, for programs beginning between January 1 and March 31, 1998;

January 7, 1998, for programs beginning between April 1 and June 30, 1998;

April 1, 1998, for programs beginning between July 1 and September 30, 1998; and

July 1, 1998, for programs beginning between October 1 and December 31, 1998.

No exceptions or extensions will be granted. Applicants are encouraged not to wait for the decision on the scholarship to register for the educational program they wish to attend.

(d) Concurrence Requirement. All scholarship applicants must obtain the written concurrence of the Chief Justice of their State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (Form S2, see Appendix V). Court managers, other than elected clerks of court, also must submit a letter of support from their supervisor. The Concurrence form may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within two weeks after the appropriate application mailing deadline (i.e. by October 15, 1997, or January 21, April 15, or July 15, 1998). No application will be reviewed if a signed Concurrence form 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. The Committee will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for education in the particular course subject and how the applicant would apply the information/skills gained;
- The direct 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 the current legal, procedural, administrative, or other problems affecting the State's courts that are related to topics to be addressed at the educational;
- 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) Non-transferability. A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the recipient submits a letter requesting to attend a different course. The letter must explain the reasons for the change; the need for the information or skills to be provided by the new course; how the information or skills will be used to benefit the individual, his or her court, and/or the courts of the State; and how the knowledge or skills gained will be disseminated. Requests to use a scholarship for a different course must be approved by the Judicial Education Committee of the Institute's Board of Directors. Ordinarily, decisions on such requests will be made within 30 days after the receipt of the request letter.

(g) Responsibilities of Scholarship Recipients. In order to receive the funds authorized by a scholarship award, recipients must submit a 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, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation 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.

iv. National Conferences. This category includes support for national conferences on topics of major concern to State court judges and personnel across the nation. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. In planning a conference, applicants should provide for a written, video, or computer-based product that would widely disseminate information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting:

(a) A National Symposium on the Future of Court Education to provide guidance to the courts, judicial education providers, the Institute, and other grantmaking organizations. The Symposium should provide a forum for discussing:

- The best methods for using technologically-based educational approaches, and the most effective ways of integrating those approaches into effective court education programs;
- The design and implementation of programs that address all adult learning styles;

• The incorporation of educational programs and opportunities as an integral part of on-going court operations;

• The appropriate and effective use of experiential learning approaches;

• The most practical and informative methods for evaluating learning and its impact on the knowledge and skills of individual learners, the effect on the operations of their courts, and the impact on the quality of the services provided to those who use the courts; and

• How judicial education may change over the next 10 to 20 years, strategic plans for realizing those changes, and recommendations for how SJI, other grantmakers, and adult education providers can assist in implementing those changes.

(b) A National Conference on Unrepresented Litigants in Court involving judges, court managers, policymakers, bar leaders, scholars and the public, to:

• Develop a clearer understanding of the proportion and nature of litigants who choose to represent themselves in courts;

• Obtain information about the nature and effectiveness of innovative programs, procedures, programs, and materials developed by jurisdictions throughout the country;

• Identify problem areas that remain; and

• Prepare action plans and recommendations on how to address those problems at the local, State, and national levels.

c. Dispute resolution and the courts. This category includes research, evaluation, and demonstration projects to evaluate or enhance the effectiveness of court-connected dispute resolution programs. The Institute is interested in projects that facilitate comparison among research studies by using similar measures and definitions; address the nature and operation of ADR programs within the context of the court system as a whole; and compare dispute resolution processes to attorney settlement as well as trial. Specific topics of interest include:

• Determining the appropriate timing for referrals to dispute resolution services to enhance settlements and reduce time to disposition;

• Assessing the effect of different referral methods including any differences in outcome between voluntary and mandatory referrals;

• Comparing the appropriateness and effectiveness of facilitative and evaluative mediation in various types of cases;

• Testing innovative approaches that provide rural courts and other under-served areas with adequate court-connected dispute resolution services;

• Evaluating innovative court-connected dispute resolution programs for resolving specific types of cases such as guardianship petitions, probate proceedings, land-use disputes, and complex and multi-party litigation;

• Testing of methods that courts can use to assure the quality of court-connected dispute resolution programs; and

• Developing guidelines on what actions by non-lawyer mediators may constitute the unauthorized practice of law.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs or start-up costs of non-innovative ADR programs. Courts also should be advised that it is preferable for the applicant to use its funds to support the operational costs of an innovative program and request Institute funds to support related technical assistance, training, and evaluation elements of the program.

In previous funding cycles, the Institute has supported projects to evaluate the use of mediation in civil, domestic relations, juvenile, medical malpractice, appellate, and minor criminal cases, as well as in resolving grievances of court employees. SJI grants also have supported assessments of the impact of private judging on State courts; multi-door courthouse programs; arbitration of civil cases; screening and intake procedures for mediation; the relationship of mediator training and qualifications to case outcome and party satisfaction; early referrals to mediation in divorce proceedings; and trial and appellate level civil settlement programs.

In addition, SJI has supported two national conferences on court-connected dispute resolution; a national ADR resource center and a national database of court-connected dispute resolution programs; training programs for judges and mediators; the testing of Statewide and trial court-based ADR monitoring/evaluation systems and implementation manuals; the promulgation and implementation of principles and policies regarding the qualifications, selection, and training of court-connected neutrals; development of standards for court-annexed mediation programs; and an examination of the applicability of various dispute resolution procedures to different cultural groups.

d. 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 an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. 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:

• Evaluate the use of the Internet for case and document filing, and develop model rules governing electronic filing and notice;

• Establish standards for judicial electronic data interchange (EDI), and test local, Statewide, and/or interstate demonstrations of the courts' use of EDI;

• Demonstrate and evaluate the use of videoconferencing technology to present testimony by witnesses in remote locations, and appellate arguments (but see the limitations specified below); and

• Assess the impact of the use of multimedia CD-ROM-based briefs on the courts, parties, counsel, and the trial or appellate process.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that is commonly used by courts, such as videoconferencing between courts and jails, optical imaging for recordkeeping, and automated management information systems. (See also 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 projects that: Demonstrate and evaluate the availability of electronic forms and information on the Internet to assist pro se litigants; access to case data via the Internet; electronic filing and document transfer; an electronic document management system; 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; a document management system for small courts using imaging technology; a computerized citizen intake and referral service; an ''analytic judicial desktop system'' to assist judges in

making sentencing decisions; and the use of automated teller machines for paying jurors.

Grants have also supported national court technology conferences; a court technology laboratory to provide judges and court managers an opportunity to test automated court-related hardware and software; a technical information service to respond to specific inquiries concerning court-related technologies; development of recommendations for electronic transfer of court documents, model rules on the use of computer-generated demonstrative evidence and electronic documentary evidence, and guidelines on privacy and public access to electronic court information and on court access to the information superhighway; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

e. Court planning, management, financing. The Institute is interested in supporting projects that explore emerging issues that will affect the State courts as they enter the 21st Century, as well as projects that develop and test innovative approaches for managing the courts, securing and managing the resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes. In particular the Institute is interested in:

i. Demonstration, evaluation, education, research, and technical assistance projects to:

- Develop, implement, and assess innovative case management techniques for specialized calendars including but not limited to drug courts, domestic violence courts, juvenile courts, and family courts;
- Facilitate communication, information sharing, and coordination between the juvenile and criminal courts;
- Assess the effects of innovative management approaches designed to assure quality services to court users;
- Strengthen the leadership skills of presiding judges and court managers;
- Develop and test methods for facilitating and implementing change and for encouraging excellence in court operations;
- Demonstrate and assess the effective use of staff teams in court operations;
- Institutionalize long-range planning approaches in individual States and local jurisdictions, including development of an ongoing internal capacity to conduct environmental scanning, trends analysis, and benchmarking; and
- Develop and test 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; and
- Test innovative programs and procedures for providing clear and open communications between the judicial and legislative branches of government.

ii. Education, technical assistance, and other projects to facilitate the establishment, maintenance, and institutionalization of effective partnerships among courts, criminal justice agencies, treatment providers, and other organizations (e.g., shelters for victims of domestic violence) that promote effective responses to particular types of cases or classes of offenders. These partnerships can take many forms such as drug courts, family violence coordinating councils, sex offender management teams, and intermediate sanctions working groups. Although many jurisdictions have already undertaken one or more such team efforts, the promise of these collaborations has too often been squandered as a result of the difficulties the participating courts and agencies face in reconciling their distinct and, in some cases, adversarial responsibilities with the idea of working together toward a common goal.

The Institute anticipates joining together with several Federal grant agencies to support one or more teambuilding projects that will help each agency achieve its respective statutory mission. These activities could include:

- Preparing and presenting educational programs to foster development of effective teams;
- Delivering on-site technical assistance to develop a team or enhance an existing partnership;
- Providing information on teambuilding through a national resource center; and
- Preparing manuals, guides, and other written and visual products to assist the development and operation of effective teams.

Applicants should address how they would enter into collaborative relationships with other organizations to provide the diverse services and the full range of necessary expertise to interested jurisdictions in a timely fashion.

iii. Demonstration, evaluation, education, technical assistance, and research projects to implement the National Agenda on Assuring Prompt and Affordable Justice being developed under grant no. SJI–97–004, due to be completed this fall. The key elements of the agenda will be published in the winter issue of SJI News. Concept papers addressing this topic must be mailed by March 12, 1998.

iv. The preparation of ''think pieces'' exploring possible changes in the court process or judicial administration and their implications for judges, court managers, policymakers, and the public. Grants supporting such projects are limited to no more than $10,000. The resulting essay should be directed to the court community and be of publishable quality.

Possible topics include, but are not limited to: what the new ''community courts'' can learn from the old justice of the peace courts; the ramifications of ''virtual trials'' (i.e. proceedings in which one or more trial participants including the parties, counsel, witnesses, the judge, and the jury may not be physically in the courtroom); the implications of the use of technology-enhanced courtroom presentations, especially when there is an imbalance of resources among the parties; the appropriateness of modifying methods of selecting, qualifying, and using juries; and the uses of technology to better prepare and inform jurors.

In previous funding cycles, the Institute has supported national and Statewide ''future and the courts'' conferences and training; curricula, guidebooks, a video on visioning, and a long-range planning guide for trial courts; and technical assistance to courts conducting futures and long-range planning.

SJI has also supported executive management programs for teams of judges and court administrators; a test of the feasibility of implementing the Trial Court Performance Standards in four States; Appellate Court Performance Standards and Measures; a TQM guidebook and training materials for trial courts; revision of the Standards on Judicial Administration; projects identifying the causes of delay in trial and appellate courts; the preparation of a national agenda for reducing litigation cost and delay; the testing of various types of weighted caseload systems; a National Interbranch Conference on Funding the State Courts; and National Symposia on Court Management.

f. Resolution of current evidentiary issues. This category includes educational programs, the development of model rules and jury instructions, and other projects to assist judges in deciding questions regarding:

• The admissibility and effectiveness of new forms of demonstrative evidence, including computer simulations;

• The admissibility and weight to be given to complex scientific or technical evidence under the standards set forth in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*;

• The admissibility of genetic evidence generally, and the findings of the 1996 National Academy of Sciences report evaluating forensic DNA evidence, in particular; and

• The appropriateness of awards of punitive damages.

In previous funding cycles, the Institute has supported the analysis of issues related to the use of expert testimony in criminal cases involving domestic violence; a computer-assisted training program on evidentiary problems for juvenile and family court judges; training on medical/legal and scientific evidence issues and regional seminars on evidentiary questions; a videotape and other materials on scientific evidence; a workshop on the use of DNA evidence in criminal proceedings; and benchbooks on evidentiary issues pertaining to psychiatric evidence and testimony, and to testimony by child witnesses.

g. Substance abuse. This category includes education, technical assistance, research, and evaluation projects to assist courts in handling a large volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously.

The Institute is particularly interested in projects to:

• Assess the effect of managed health-care plans on the availability and cost of drug treatment services for court-enforced treatment programs, and assist courts in shaping managed care plans to enhance the availability of necessary services at a reasonable cost;

• Prepare and test measures, forms, and other tools to facilitate self-evaluation of court-enforced substance abuse treatment programs; and

• Develop and deliver educational programs or technical assistance to help courts in designing, managing, or evaluating drug court programs for adults or juveniles. (**This does not include providing support for planning, establishing, operating, or enhancing a local drug court.** Applicants interested in obtaining such operational support should contact the Drug Court Program Office, Office of Justice Programs, U.S. Department of Justice.)

The Institute has supported the presentation of the 1995 National Symposium on the Implementation and Operation of Court-Enforced Drug Treatment Programs as well as the 1991 National Conference on Substance Abuse and the Courts, and efforts to implement the State and local plans developed at these Conferences.

It has also supported projects to evaluate court-enforced treatment programs, special court-ordered programs for women offenders, and other court-based alcohol and drug assessment programs; test the applicability of drug courts in non-urban sites; involve community groups and families in drug court programs; assess the impact of legislation and court decisions dealing with drug-affected infants; develop strategies for coping with increasing caseload pressures, and benchbooks and other educational materials on child abuse and neglect cases involving parental substance abuse and appropriate sentences for pregnant substance abusers; 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. In addition, SJI has supported an information system that permits courts, criminal justice agencies, and drug treatment providers to share information electronically.

h. Children and families in court. This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that:

i. Assist courts in addressing the special needs of children in cases involving family violence including the development and testing of innovative protocols, procedures, educational programs, and other measures for improving the capacity of courts to:

• Coordinate and adjudicate child custody and family violence cases involving the same family;

• Determine and address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders; and

• Adjudicate and monitor child abuse and neglect litigation and reconcile the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family.

ii. Enhance the fairness and effectiveness of proceedings regarding a juvenile accused of committing a delinquent or criminal offense, including projects that:

• Prepare and test curricula and materials for judges on how to manage cases involving gang members fairly, safely, and effectively, including the use of appropriate procedures for determining pre-adjudication release, protecting witnesses, and developing effective dispositions;

• Develop and test effective approaches for the detention, adjudication, and disposition of juveniles under age 13 who are accused of involvement in a violent offense; and

• Develop and test effective policies, procedures, and educational materials for judges regarding cases in which a juvenile is tried as an adult.

iii. Improve the fairness and effectiveness of proceedings to determine custody, visitation, and support issues, including projects that develop and test guidelines, curricula, and other materials to assist trial judges in:

• Determining the best interest of a child;

• Enforcing visitation orders fairly and effectively; and

• Establishing and enforcing custody, and support orders in cases in which a child's parents were never married to each other.

iv. Improve the effectiveness and operating efficiency of juvenile and family courts, including projects to:

• Develop and test innovative techniques for improving communication, sharing information, and coordinating juvenile and criminal courts and divisions; and

• Implement the action agenda developed at the National Symposium on Reviewing the Past and Looking Toward the Future of the Juvenile Court held in Reno, Nevada on September 28—October 1, 1997. The key elements in the agenda will be published in the winter issue of SJI News. Concept papers addressing this topic must be mailed by March 12, 1998.

In previous funding cycles, the Institute supported national and State conferences on courts, children, and the family; a review of juvenile courts in light of the upcoming 100th anniversary of the founding of the first juvenile court; validation of a risk assessment tool for juvenile offenders; a symposium on the resolution of interstate child welfare issues; and educational materials on the questioning of child witnesses, making reasonable efforts to preserve families, adjudicating allegations of child sexual abuse when custody is in dispute, child victimization, handling child abuse and neglect cases when parental substance abuse is involved, and on children as the silent victims of spousal abuse.

Other Institute grants have supported the development of computer-based

training on the Uniform Interstate Family Support Act, and the examination of supervised visitation programs, effective court responses when domestic violence and custody disputes coincide, and foster care review procedures.

In addition, the Institute has supported projects to enhance coordination of cases involving the same family that are being heard in different courts; assist States considering establishment of a family court; develop national and State-based training materials for guardians ad litem; examine the authority of the juvenile court to enforce treatment orders and the role of juvenile court judges; test the use of differentiated case management in juvenile court; and develop innovative approaches for coordinating services for children and youth.

i. Improving the courts' response to domestic violence. This category includes innovative education, demonstration, technical assistance, evaluation, and research projects to improve the fair and effective processing, consideration, and disposition of cases concerning domestic violence and gender-related violent crimes, including projects on:

- The effective use and enforcement of intra- and inter-State protective orders including implementation of the court-related findings and recommendations resulting from the National Conference on Full Faith and Credit: A Passport to Safety to be held in Albuquerque, NM in October, 1997. The key findings and recommendations from the conference will be published in the winter issue of SJI News. Concept papers proposing projects that follow up on the conference must be mailed by March 12, 1998;
- The effective use of information contained in protection order files stored in court electronic databases consistent with the protection of the privacy and safety of victims of violence;
- The effectiveness of specialized calendars or divisions for considering domestic violence cases and related matters, including their impact on victims, offenders, and court operations;
- Determining when it may be appropriate to refer a case involving family violence for mediation and what procedures and safeguards should be employed;
- Effective ways to coordinate the response to domestic violence and gender-related crimes of violence among courts, criminal justice agencies, and social services programs, and to assure that courts are fully accessible to victims of domestic violence and other gender-related violent crimes;
- Special precautions that should be taken and information that should be provided when participants referred by the court to a parent education program may include parents from violent homes; and
- Effective sentencing approaches in cases involving domestic violence and other gender-related crimes.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime (OVC), Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

In previous funding cycles, the Institute supported national and State conferences on family violence and the courts as well as projects to implement the action plans developed at these conferences; symposia and guides on the implementation of the full faith and credit requirements included in the Violence Against Women Act; curricula for judges on a range of topics regarding the handling of family violence, rape, and sexual assault cases; and preparation of descriptions of innovative court practices in family violence cases, including programs for battered mothers and their children, and procedures for coordinating multiple cases involving a single family.

The Institute also has funded evaluations of the effectiveness of specialized domestic violence calendars, court-ordered treatment for family violence offenders, the use of alternatives to adjudication in child abuse cases, and procedures to improve the effectiveness of civil protection orders for family violence victims; development of recommendations on how to improve access to rural courts for victims of family violence, and to collect and report dispositional and other data concerning family violence cases; research and judicial education on the use of mediation in domestic relations cases involving allegations of violence, the relevancy of culture in adjudicating and disposing of family violence cases, and effective sentencing of sex offenders; videotapes and other educational programs for the parties in divorce actions and their children; analyses of the issues related to the use of expert testimony in criminal cases involving domestic violence; and development of electronic links among courts, criminal justice agencies, and service providers to share information and assist victims of violence.

j. Improving sentencing practices. This category includes education, demonstration, technical assistance, evaluation, and research projects to address and implement the findings and recommendations reached at the National Symposium on Sentencing: The Judicial Response to Crime, to be held in San Diego, CA on November 1–4, 1997. The key findings and recommendations will be published in the winter issue of SJI News. Concept papers submitted under this category must be mailed by March 12, 1998.

k. Improving court security. This category includes demonstration, evaluation, technical assistance, education, and research projects to enhance the security of courthouses and the people who use and work in them. The Institute is particularly interested in supporting innovative projects to:

- Develop policies, protocols, and procedures designed to prevent harassment, threats, and incidents endangering the lives and property of judges, court employees, jurors, litigants, witnesses, and other members of the public in court facilities;
- Evaluate innovative applications of technology to prevent courthouse incidents that endanger the lives and property of judges, court personnel, and courtroom participants; and
- Develop and test model training programs that will assist judges and court personnel in protecting their safety and that of jurors, litigants, witnesses, and other members of the public in court facilities, and in managing cases involving individuals or organizations unwilling to cooperate with legal or administrative procedures.

In previous funding cycles, the Institute has supported the development of a joint electronic filing system for the State and Federal courts in a State; a demonstration project to organize sharing of court security staff between counties; a court security clearinghouse; and an educational program and benchbook on the common law court movement.

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 projects that:

i. Develop and test curricula and disseminate information regarding effective methods being used at the trial court, State, and Circuit levels to

coordinate cases and administrative activities, and share facilities; and

ii. Develop and test new approaches to:

- Implement the habeas corpus provisions of the Anti-Terrorism Act of 1996;
- Handle capital habeas corpus cases fairly and efficiently;
- Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;
- Coordinate the adjudication of related State and Federal criminal cases;
- Coordinate related State and Federal cases that may be brought under the Violence Against Women Act;
- Exchange information and coordinate calendars among State and Federal courts; and
- Share facilities, jury pools, alternative dispute resolution programs, information regarding persons on pretrial release or probation, and court services.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships, a national conference on mass tort litigation, and the Chief Justices' Special Committee on Mass Tort Litigation.

In addition, the Institute has supported projects testing the use common electronic filing process for the State and Federal courts in New Mexico, and other methods of State and Federal trial and appellate court cooperation; developing judicial impact statement procedures for national legislation affecting State courts; establishing procedures for facilitating certification of questions of law; assessing 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, and 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 the assignment of specialized law clerks to trial courts hearing capital cases in order to improve the fairness and efficiency of death penalty litigation at the trial level.

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. The Institute has established two categories of Single Jurisdiction Projects:

1. Projects Addressing a Critical Need of a Single State or Local Jurisdiction

a. Description of the program. The Board will set aside up to $300,000 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. In particular, the Institute is interested in proposals to replicate programs, procedures, or strategies that have been developed, demonstrated, or evaluated by SJI-supported projects. (A list of examples of such projects is contained in Appendix IV.) Ordinarily, the Institute will not provide support solely for the purchase of equipment or software.

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 $400,000 to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. The Committee will reserve sufficient funds each quarter to assure the availability of technical assistance grants throughout the year. 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. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

b. Eligibility for Technical Assistance Grants. Only a State or local court may apply for a Technical Assistance grant. 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.

c. 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 also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

d. Application Procedures. In lieu of 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 issues listed below. 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 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 and how would they be accomplished? Which 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, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide 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. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

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 specific court officials or committees, 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 V), and budget narrative must be included with the applicant's letter requesting technical assistance. 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.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., number of days per task times the requested daily consultant rate). **Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid at a rate in excess of $900 per day.** In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of technical assistance grants do not have to submit an audit, but must maintain appropriate documentation to support expenditures. (See section X.M.)

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 VI) 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 June 14 and September 30, 1997 will be notified of the Board's decision by December 5, 1997; those submitting letters between October 1, 1997 and January 16, 1998 will be notified by March 27, 1998; notification of the Board's decisions concerning letters mailed between January 17 and March 13, 1998, will be made by May 29, 1998; notice of decisions regarding letters submitted between March 14 and June 12, 1998 will be made by August 28, 1998. Subject to the availability of sufficient appropriations for fiscal year 1999, applicants submitting letters between June 13 and September 30, 1998, will be notified by December 18, 1998.

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 should 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 October 31, 1997, and February 12, April 17, and July 10, 1998).

vi. Grantee Responsibilities. Technical Assistance grant recipients 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.

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, or, 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 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 products or services produced 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 critical need.

I. 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.

J. 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.

K. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

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.

In addition, 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. Project grants (See sections II.B., and C.1., 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. Technical Assistance grants (See section II.C.2).
5. Curriculum Adaptation grants (See section II.B.2.b.ii.).
6. Scholarships (See section II.B.2.b.iii).

C. Maximum Size of Awards

1. Except as specified below, applications for new project grants and applications for continuation grants may request funding in amounts up to $200,000, although new and continuation awards in excess of $150,000 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 over three years, although awards in excess of $450,000 are likely to be rare. At the discretion of the Board, the funds for 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; (2) the availability of

appropriations for that fiscal year; and (3) the Board of Directors' determination that the project continues to fall within the Institute's priorities.

3. Applications for technical assistance grants may request funding in amounts up to $30,000.

4. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

5. 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 15 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. The concept paper requirement and the submission deadlines for concept papers and applications may be waived by the Executive Director for good cause (e.g., the proposed project could 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.

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 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.A.) 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

The program narrative of a concept paper should be no longer than necessary, **but may exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi.** The narrative should describe:

a. *Why is this project needed and how will it 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 site(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.

b. *What will be done if a grant is awarded?* Applicants should include 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, and include a detailed task schedule as an attachment to the concept paper.

c. *How will the effects and quality of the project be determined?* Applicants should include a summary description of how the project will be evaluated, including the evaluation criteria.

d. *How will others find out about the project and be able to use the results?* Applicants should describe the products that will result, the degree to which they will be applicable to courts across the nation, and to whom the products and results of the project will be disseminated in addition to the SJI-designated libraries (e.g., State chief justices, specified groups of trial judges, State court administrators, specified groups of trial court administrators, State judicial educators, or other audiences).

3. The Budget

a. Preliminary budget. A preliminary budget must be attached to the narrative that includes the information specified on Form E included in Appendix VI of this Guideline. Applicants should be aware that prior written Institute approval is required for any consultant rate in excess of $300 per day, and that Institute funds may not be used to pay a consultant in excess of $900 per day.

b. 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 VI) a budget narrative that explains the basis for each of the items listed, and indicates whether the costs would be paid from grant funds, through a matching contribution, or from other sources.

4. Letters of Cooperation or Support

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 6, 1998.

5. Page Limits

a. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.b., the task schedule if required under section VI.A.2.b., 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.

b. 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.

6. Sample Concept Papers

Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated 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.

''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.

2. In determining which concept papers will be approved for award or 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 its 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.

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. Applicants considering whether to request consideration for an accelerated award should make certain that the proposed budget is sufficient to accomplish the project objectives in a quality manner. Because the Institute's experience has been that projects to conduct empirical research or a program evaluation ordinarily require a more thorough explanation of the methodology to be used than can be provided within the space limitations of a concept paper, the Board is unlikely to waive the application requirement for such projects.

D. Submission Requirements

Except as noted below, an original and three copies of all concept papers submitted for consideration in Fiscal Year 1998 must be sent by first class or overnight mail or by courier no later than November 24, 1997.

Concept papers proposing projects on the following topics must be sent by first class or overnight mail or by courier no later than March 12, 1998:

- The National Agenda on Assuring Prompt and Affordable Justice (section II.B.2.e.iii.);
- The action agenda developed at the National Symposium on Reviewing the Past and Looking Toward the Future of the Juvenile Court (section II.B.2.h.iv.);
- The findings and recommendations resulting from the National Conference on Full Faith and Credit: A Passport to Safety (section II.B.2.i.); and
- The findings and recommendations resulting from the National Symposium on Sentencing: The Judicial Response to Crime (section II.B.2.j.)

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.**

The Institute will send written notice to all persons submitting concept papers, informing them 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 Appendix I 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

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 required application forms are described below and are included in Appendix VII. They also may be requested via E-mail (SJI@clark.net) or by calling the Institute and requesting a copy (703–684–6100). Applicants may photocopy the forms to make completion easier.

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 $100,000 or more 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, as well as for the total length of the project.

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.)

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 should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. 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 impart 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

The applicant should include 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

The applicant should list the Special Interest Category or Categories that are addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area or Areas that are addressed by the proposed project. (See section II.A.)

3. Need for the Project

If the project is to be conducted in a specific location(s), the applicant should discuss 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, the applicant should discuss the problems that the proposed project would 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.

4. Tasks, Methods and Evaluation

a. Tasks and methods. The applicant should delineate 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 applicant should include 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 that explains 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 applicant should include 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 and the estimated number of persons who will attend them; the materials to be provided and how they will be developed; and the cost to participants.

iii. For demonstration projects, the applicant should include 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; and how the program or procedures will be implemented and monitored.

iv. For technical assistance projects, the applicant should explain 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.

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 on-going 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. Research. 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. Education and Training. 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 both verbal and 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. Demonstration. 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. Technical Assistance. 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 subject protection issues ordinarily are not applicable to participants evaluating an education program.

5. Project Management

The applicant should present 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).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

6. Products

The application should contain 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.

a. Dissemination plan. 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). (See section X.V.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period. Applicants also must submit a diskette containing a one-page abstract summarizing the products resulting from a project in Word, WordPerfect, or ASCII. The abstract should include the grant number and the name of a contact person together with that individual's address, telephone number, and e-mail address (if applicable).

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.

Twenty copies of all project products must be submitted to the Institute. A master copy of each videotape, in addition to 20 copies of each videotape product, must also be provided to the Institute.

b. Types of products. The type of product to be prepared depends 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.

c. Institute review. Applicants must provide for submitting a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

d. Acknowledgment, disclaimer, and logo. 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.

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 state 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 nonjudicial 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

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Résumés 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. The applicant also should identify the person who would be responsible for the financial management and financial reporting for the proposed project.

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.

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.

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.

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 Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them 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 no more than 30 days after the deadline for mailing the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. 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. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant at a rate in excess of $900 per day.

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 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 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 of the travel should also be included in the narrative.

5. Equipment

Grant funds many 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.

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. Every applicant must submit one set of the application forms with 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. Applicants may send four photocopies of the Program Narrative, Budget Forms (FORM C or C–1), Budget Narrative and any appendices; a diskette with this material in Microsoft Word or ASCII format; or transmit the material to the Institute via E-mail. **Applicants may not send a portion of the application material in written form (other than the application forms themselves) and a portion in electronic form, or a portion on diskette and a portion via E-mail.**

All invited applications based on concept papers submitted by November 24, 1997, must be mailed, sent by courier, or E-Mailed no later than May 8, 1998. All invited applications based on concept papers addressing the topics with a special submission deadline of March 12, 1998, must be mailed, sent by courier, or E-mailed no later than June 18, 1998.

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, VA 22314.**

The Institute's E-Mail address is: **SJI@clark.net**

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted. See section VII.C.11. for receipt deadlines for letters of support.

2. Applicants submitting 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 limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

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 acknowledging receipt of the 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 demonstration of need for the project;

c. The appropriateness of the proposed evaluation design;

d. The applicant's management plan and organizational capabilities;

e. The qualifications of the project's staff;

f. The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the nation;

g. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

h. The reasonableness of the proposed budget;

i. The demonstration of cooperation and support of other agencies that may be affected by the project; and

j. The proposed project's relationship to one of the ''Special Interest'' categories set forth in section II.B.

2. 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 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, defer, 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 proposal 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 may* 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 25% of available FY 1998 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.

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 the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and 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. The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. Need for continuation. The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the 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?

c. Report of current project activities. The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. Evaluation findings. The applicant should present 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. The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products will be disseminated, as well as any changes in 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.

f. Task schedule. The applicant should present a detailed task schedule and timeline for the next project period.

g. Other sources of support. The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should 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. In addition, the applicant should estimate the amount of grant funds that will remain unobligated at the end of the current grant period.

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 critical 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. 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.

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 critical 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 mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-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. Letters of Intent

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. 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. The applicant should provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. Demonstration of court support. The applicant should demonstrate support for the continuation of the project from the courts community.

c. Report on current project activities. The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. Evaluation findings. The applicant should 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. The applicant should 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. The grantee also should describe the steps it will take to obtain support from other sources for the continued operation of the project.

f. Task schedule. The applicant should present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. Other sources of support. The applicant should describe what efforts it has taken to secure support for the project from other sources and discuss why other sources of support are inadequate, inappropriate, or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D., and estimate the amount of grant funds that will remain unobligated at the end of the current grant period. 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 the full project as well as 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.

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 Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the person to contact in each State regarding the administration of Institute grants to 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 that 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 the request of the Chief Justice of the highest court in the State and approval by 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. 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.iii., 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

Recipients, other than those noted below, 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. (See section XI.J. of the Guideline for the requirements of such audits.) Recipients of a scholarship, curriculum adaptation, or technical assistance grant are not required to submit an audit, but must

maintain appropriate documentation to support all expenditures.

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, the Guideline, 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 and approved by 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. 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. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. 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 written product to the Institute for review and approval. These drafts shall be submitted at least 30 days 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. Grantees shall provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development.

S. Distribution of Grant Products

In addition to the distribution specified in the grant application, grantees shall send:

1. Twenty 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.
2. A mastercopy of each videotape produced with grant funds to the Institute.
3. A one-page abstract to the Institute summarizing the products produced during the project for posting on the Internet together with a diskette containing the abstract in Word, WordPerfect, or ASCII. The abstract should include the grant number, a contact name, address, telephone numbers, and e-mail address (if applicable).
4. 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, with the Institute's prior written approval, recover its costs for developing, producing, 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.

In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, 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.F. and XI.F. for requirements regarding project-related income realized during the project period.

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 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 under the same terms and conditions that apply to Federal grantees. 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. (Circulars may be obtained from OMB by calling 202–395–7250.)

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.

h. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

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 or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. Reviewing financial operations. The State Supreme Court or its designee 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 or its designee 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 or its designee 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 or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of the Guideline are applied to such funds.

e. Audit requirement. The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements set forth by the Institute (see sections X.M. and XI.J).

f. Reporting irregularities. The State Supreme Court, its designees, 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 of Directors 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, canceled 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 and must be reported to the Institute. (See section XI.G.2.) 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 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 grant 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 intended to recover 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 grantee recovers its costs in this manner, then amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

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 grant'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.

b. Continuation and on-going support awards. For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should treat each grant as a new project and number their requests accordingly (i.e. on a grant rather than a project basis). For example, the first request for payment from a continuation grant or each year of an on-going support would be number 1, the second number 2, etc. (See Recommendations to Grantees in the Introduction for further guidance.)

c. 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 may suspend reimbursement payments until the deficiencies are corrected.

d. 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

a. General requirements. 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.

Three copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.iii., 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, project income, and any other sources of funds for the project, as well as information on obligations and 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.

b. Additional requirements for renewal grants. Grantees receiving a continuation or on-going support grant should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant or each year of an on-going support award should be number 1, the second number 2, etc.

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 or termination of grant payments.

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. Copies of these circulars may be obtained from OMB by calling (202) 395–7250.

2. Costs Requiring Prior Approval

a. Pre-agreement 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. Institute funds may not be used to pay a consultant at a rate in excess of $900 per 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 may 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 negotiated 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 within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular. Copies of OMB Circulars may be obtained directly from OMB by calling (202) 395–7250.

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 adopts the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals; 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 recipient of a grant from the Institute other than a scholarship, curriculum adaptation, or technical assistance grant (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.

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 or termination 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 (See section XI.K.3), the following documents must be submitted to the Institute by the grantee other than a recipient of a scholarship under section II.B.2.b.iii. These reporting requirements apply at the conclusion of any non-scholarship grant, even when the project will receive renewal funding through a continuation or on-going support grant.

a. Financial status report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. Final progress report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; 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.

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 or temporary absence of the person responsible for the financial management and financial reporting for the grant.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see section XII.H.).

11. A transfer of the grant to another recipient.

12. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

13. 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 their SJI program manager, 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 program manager determines 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 designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be

provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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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. Frank Gregory, Administrative Director, Administrative Office of the Courts, 300 Dexter Avenue, Montgomery, AL 36130, (205) 834–7990
Ms. Stephanie J. Cole, Administrative Director, Alaska Court System, 303 K Street, Anchorage, AK 99501, (907) 264–0547
Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9301
Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, AR 72201, (501) 682–9400
Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396–9115
Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203–2416, (303) 861–1111, ext. 585
Honorable Aaron Ment, Chief Court Administrator, Supreme Court of Connecticut, 231 Capitol Avenue, Drawer N, Station A, Hartford, CT 06106, (860) 566–4461
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, (302) 577–2480
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, FL 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, GA 30334–5900, (404) 656–5171
Administrative Director, Superior Court of Guam, Judiciary Building, 120 West O'Brien Drive, Agana, Guam 96910, 011 (671) 475–3544
Mr. Michael F. Broderick, Administrative Director of the Courts, 417 S. King Street, Room 206, Honolulu, HI 96813, (808) 539–4900
Ms. Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court, 451 West State Street, Boise, ID 83720–0101, (208) 334–2246
Honorable Joseph A. Schillaci, Administrative Director of the Courts, 222 N. LaSalle Street, 13th Floor, Chicago, IL 60601, (312) 793–8191
Ms. Lilia G. Judson, Acting Executive Director, Supreme Court of Indiana, 115 W. Washington, Suite 1080, Indianapolis, IN 46204–3417, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, IA 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, KS 66612, (913) 296–4873
Mr. Paul F. Isaacs, Administrative Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, KY 40601–9230, (502) 573–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, LA 70112, (504) 568–5747
Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, PO Box 4820, Downtown Station, Portland, ME 04112–4820, (207) 822–0792
Mr. George B. Riggin, Jr., State Court Administrator, Administrative Office of the Courts, Courts of Appeal Bldg., 361 Rowe Boulevard, Annapolis, MD 21401, (410) 974–2141
Honorable John J. Irwin, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, MA 02108, (617) 742–8575
Mr. John D. Ferry, Jr., State Court Administrator, Michigan Supreme Court, 309 N. Washington Square, PO Box 30048, Lansing, MI 48909, (517) 373–0130
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (617) 296–2474
Mr. Richard Patt, Acting Director, Administrative Office of the Courts, Supreme Court of Mississippi, PO Box 117, Jackson, MS 39205, (601) 354–7408
Mr. Ron Larkin, State Court Administrator, Supreme Court of Missouri, PO Box 104480, Jefferson City, MO 65110, (314) 751–3585.
Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, MT 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, NE 68509, (404) 471–3730
Ms. Georgia J. Rohrs, Court Administrator, Administrative Office of the Courts,

Capitol Complex, Carson City, NV 89710, (702) 687–5076

Mr. Donald Goodnow, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, NH 03301, (603) 271–2521

Mr. James J. Ciancia, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, NJ 08625, (609) 984–0275

Honorable Jonathan Lippman, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, NY 10007, (212) 417–2007

Mr. John M. Greacen, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, NM 87503, (505) 827–4800

Mr. Dallas A. Cameron, Jr., Administrative Director, Administrative Office of the Courts, PO Box 2448, Raleigh, NC 27602, (919) 733–7107

Mr. Keith E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, ND 58505, (701) 328–4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, OR 97310, (503) 986–5900

Ms. Nancy M. Sobolevitch, Court Administrator, Supreme Court of Pennsylvania, 1515 Market Street, Suite 1414, Philadelphia, PA 19102, (215) 560–6337

Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, RI 02903, (401) 277–3263

Mr. George A. Markert, Director, South Carolina Court Administration, PO Box 50447, Columbia, SC 29250, (803) 734–1800

Mr. Michael L. Buenger, State Court Administrator, Unified Judicial System, 500 East Capitol Avenue, Pierre, SD 57501, (605) 773–3474

Mr. Charles E. Ferrell, Administrative Director of the Courts, Nashville City Center, Suite 600, 511 Union Street, Nashville, TN 37243–0607, (615) 741–2687

Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration of the Texas Judicial System, 205 West 14th Street, Suite 600, Austin, TX 78701, (512) 463–1625

Mr. Daniel Becker, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, UT 84102, (801) 578–3800

Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, VT 05602, (802) 828–3278

Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, PO Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, PO Box 41174, Olympia, WA 98504, (360) 357–2121

Mr. Ted J. Philyaw, Administrative Director of the Courts, E–400, State Capitol Bldg., 1900 Kanawha Blvd., East, Charleston, WV 25305, (304) 558–0145

Mr. J. Denis Moran, Director of State Courts, P.O. Box 1688, Madison, WI 53701–1688, (608) 266–6828

Mr. Allen C. Johnson, Court Administrator, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, WY 82002, (307) 777–7480

Appendix II—SJI Libraries Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, AL 36130, (205) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries 303 K Street, Anchorage, AL 99501, (907) 264–0583

Arizona

State Law Library

Ms. Arlene Bansal, Collection Development, Research Division, Arizona Dept. of Library, Archives and Public Records, State Law Library, 1501 W. Washington Phoenix, AZ 85007, (602) 542–4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, AR 72201–1078, (501) 376–6655

California

Administrative Office of the Courts

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396–9100

Colorado

Supreme Court Library

Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720

Connecticut

State Library

Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, CT 06106, (860) 566–4301

Delaware

Administrative Office of the Courts

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, DE 19801, (302) 571–2480

District of Columbia

Executive Office, District of Columbia Courts

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700

Florida

Administrative Office of the Courts

Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, FL 32399–1900, (904) 488–8621

Georgia

Administrative Office of the Courts

Mr. Robert Doss, Jr., Administrative Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington St., SW., Suite 550, Atlanta, GA 30334–5900, (404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, Judiciary Building, P.O. Box 2560, Honolulu, HI 96804, (808) 548–4605

Idaho

AOC Judicial Education Library/State Law Library

Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court Library, Supreme Court Building, Springfield, IL 62701–1791, (217) 782–2424

Indiana

Supreme Court Library

Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, IN 46204, (317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial, Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, IA 50319, (515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66614, (913) 296–3257

Kentucky

State Law Library

Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, KY 40601, (502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, LA 70112, (504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, ME 04333, (207) 289–1600

Maryland

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (301) 974–3395

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148

Michigan

Michigan Judicial Institute

Michigan Judicial Institute, 222 Washington Square North, PO Box 30205, Lansing, MI 48909, (517) 334–7804

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (612) 297–2084

Mississippi

Mississippi Judicial College

Leslie Johnson, Director, University of Mississippi, PO Box 8850, University, MS 38677, (601) 982–6590

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, 215 North Sanders, Helena, MT 59620, (406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, PO Box 98910, Lincoln, NE 68509–8910, (402) 471–3730

Nevada

National Judicial College

Honorable V. Robert Payant, President, National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89550, (702) 784–6747

New Jersey

New Jersey State Library

Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, NJ 08625, (609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar,Librarian,Supreme Court Library,Post Office Drawer L,Santa Fe, NM 87504,(505) 827–4850

New York

Supreme Court Library

Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, NY 13202, (315) 435–2063

North Carolina

Supreme Court Library

Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, PO Box 28006, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0530, (701) 224–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Marty W.K. Taylor, Chief Justice, Supreme Court of the Northern Mariana Islands, PO Box 2165, Saipan, MP 96950, (670) 234–5275

Ohio

Supreme Court Library

Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

Oregon

Administrative Office of the Courts

Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, 1163 State Street, Salem, OR 97310, (503) 378–6046

Pennsylvania

State Library of Pennsylvania

Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, PA 17105, (717) 787–4440

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, PO Box 917, Hato Rey, PR 00919

Rhode Island

Roger Williams Law School Library

Mr. Kendall Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, RI, (401) 254–4546

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, SC 29208 (803) 777–5944

Tennessee

Tennessee State Law Library

Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, TN 37243–0609, (615) 741–2016

Texas

State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, UT 84102, (801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, c/o Pavilion Office Building, Montpelier, VT 05609, (802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, PO Box 40751, Olympia, WA 98504–0751, (206) 357–2146

West Virginia

Administrative Office of the Courts

Mr. Richard H. Rosswurm, Chief Deputy, West Virginia Supreme Court of Appeals, State Capitol, 1900 Kanawha, Charleston, WV 25305, (304) 348–0145

Wisconsin

State Law Library

Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, PO Box 7881, Madison, WI 53707, (608) 266–1424

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, WY 82002, (307) 777–7509

National

American Judicature Society

Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, IL 60602, (312) 558–6900

National Center for State Courts

Ms. Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, VA 23187–8798, (804) 253–2000

JERITT

Ms. Jennae Rozeboom, Project Director, Judicial Education Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, MI 48824, (517) 353–8603

Appendix III—Illustrative List of Model Curricula

The following list includes examples of curricula that have been developed with support from SJI, that might be—or in some cases have been—successfully adapted for State-based education programs for judges and other court personnel. *Please refer to Section II.B.2.b.ii for information on submitting a letter application for a Curriculum Adaptation Grant.* A list of all SJI-supported education projects is available from the Institute, and on the SJI website—www.clark.net/pub/sji/. Please also check with the JERITT project (517/353–8603) and with your State SJI-designated library (see Appendix II) for information on other curricula that may be appropriate for your State's needs.

Alternative Dispute Resolution

''Judicial Settlement Manual'' from ''Judicial Settlement: Development of a New Course Module, Film, and Instructional Manual'' (National Judicial College: SJI–89–089)

''Improving the Quality of Dispute Resolution'' (Ohio State University College of Law:

SJI–93–277)

''Comprehensive ADR Curriculum for Judges'' (American Bar Association: SJI–95–002)

''Domestic Violence and Custody Mediation'' (American Bar Association: SJI–96–038)

Court Coordination

''Adjudication of Farm Credit Issues'' (Rural Justice Center: SJI–87–059)

Bankruptcy Issues for State Trial Court Judges' (American Bankruptcy Institute: SJI–91–027)

''Intermediate Sanctions Handbook: Experiences and Tools for Policymakers'' (Center for Effective Public Policy: IAA–88–NIC–001)

''Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships'' (U.S. Court of Appeals for the 9th Circuit: SJI–92–087)

Court Management

''Managing Trials Effectively: A Program for State Trial Judges'' (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026)

''Caseflow Management Principles and Practices'' (Institute for Court Management/ National Center for State Courts: SJI–87–056)

''Judicial Education Curriculum: Teaching Guides on Court Security, and Jury Management and Impanelment'' (Institute for Court Management/National Center for State Courts: SJI–88–053)

''A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts'' (National Center for State Courts: SJI–90–052)

''Managerial Budgeting in the Courts''; ''Performance Appraisal in the Courts''; ''Managing Change in the Courts''; ''Court Automation Design,'' ''Case Management for Trial Judges''; ''Trial Court Performance Standards'' (Institute for Court Management/National Center for State Courts: SJI–91–043)

''Implementing the Court-Related Needs of Older Persons and Persons with Disabilities'' (National Judicial College: SJI–91–054)

''Strengthening Rural Courts of Limited Jurisdiction'' and ''Team Training for Judges and Clerks'' (Rural Justice Center: SJI–90–014, SJI–91–082)

''Interbranch Relations Workshop'' (Ohio Judicial Conference: SJI–92–079)

''Integrating Trial Management and Caseflow Management'' (Justice Management Institute: SJI–93–214)

''Leading Organizational Change'' (California Administrative Office of the Courts: SJI–94–068)

''Managing the Complex Case''; ''Privacy Issues in Computerized Record Keeping'' (National Judicial College: SJI–94–142)

''Employment Responsibilities of State Court Judges'' (National Judicial College: SJI–95–025)

''Dealing with the Common Law Courts: A Model Curruculum for Judges and Court Staff'' (Institute for Court Management/ National Center for State Courts: SJI–96–159)

Courts and Communities

''A National Program for Reporting on the Courts and the Law'' (American Judicature Society: SJI–88–014)

''Victim Rights and the Judiciary: A Training and Implementation Project'' (National Organization for Victim Assistance: SJI–89–083)

''National Guardianship Monitoring Project: Trainer and Trainee's Manual'' (American Association of Retired Persons: SJI–91–013)

''Access to Justice: The Impartial Jury and the Justice System'' and ''When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide'' (National Judicial College: SJI–91–054)

''You Are the Court System: A Focus on Customer Service'' (Alaska Court System: SJI–94–048)

''Serving the Public: A Curriculum for Court Employees'' (American Judicature Society: SJI–96–040)

Diversity, Values, and Attitudes

''Troubled Families, Troubled Judges'' (Brandeis University: SJI–89–071)

''The Crucial Nature of Attitudes and Values in Judicial Education'' (National Council of Juvenile and Family Court Judges: SJI–90–058)

''Enhancing Diversity in the Court and Community'' (Institute for Court Management/National Center for State Courts: SJI–91–043)

''Cultural Diversity Awareness in Nebraska Courts'' from ''Native American Alternatives to Incarceration Project'' (Nebraska Urban Indian Health Coalition: SJI–93–028)

''A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel'' and ''The Ethics Fieldbook: Tool For Trainers'' (American Judicature Society: SJI–93–068)

''Court Interpreter Training Course for Spanish Interpreters'' (International Institute of Buffalo: SJI–93–075)

''Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel'' (Brandeis University: SJI–94–019)

''Race Fairness and Cultural Awareness Faculty Development Workshop'' (National Judicial College: SJI–93–063)

''Indian Welfare Act''; ''Defendants, Victims, and Witnesses with Mental Retardation'' (National Judicial College: SJI–94–142)

''Multi-Cultural Training for Judges and Court Personnel'' (St. Petersburg Junior College: SJI–95–006)

''Ethical Standards for Judicial Settlement: Developing a Judicial Education Module'' (American Judicature Society: SJI–95–082)

Family Violence and Gender-Related Violence Crime

''National Judicial Response to Domestic Violence: Civil and Criminal Curricula'' (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

''Domestic Violence: A Curriculum for Rural Courts'' from ''A Project to Improve Access to Rural Courts for Victims of Domestic Violence'' (Rural Justice Center: SJI–88–081)

''Judicial Training Materials on Spousal Support''; ''Family Violence: Effective Judicial Intervention''; ''Judicial Training Materials on Child Custody and Visitation'' from ''Enhancing Gender Fairness in the

State Courts'' (Women Judges' Fund for Justice: SJI–89–062)

''Judicial Response to Stranger and Nonstranger Rape and Sexual Assault'' (National Judicial Education Program to Promote Equality for Women and Men: SJI–92–003)

''Domestic Violence & Children: Resolving Custody and Visitation Disputes'' (Family Violence Prevention Fund: SJI–93–255)

''Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute'' (National Judicial Education Program: SJI 95–019)

''Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff'' (American Bar Association: SJI–93–274)

Health and Science

''Medicine, Ethics, and the Law: Preconception to Birth'' (Women Judges Fund for Justice: SJI–89–062, SJI–91–019)

''Judicial Educator's Workshop Curriculum Guide: Implementing Medical Legal Training'' from Medical Legal Issues in Juvenile and Family Courts (National Council for Juvenile and Family Court Judges: SJI–91–091)

''Environmental Law Resource Handbook'' (University of New Mexico Institute for Public Law: SJI–92–162)

Judicial Education for Appellate Court Judges

''Career Writing Program for Appellate Judges'' (American Academy of Judicial Education: SJI–88–086–P92–1)

''Civil and Criminal Procedural Innovations for Appellate Courts' (National Center for State Courts: SJI–94–002)

Judicial Education Program and Faculty Development

''The Leadership Institute in Judicial Education'' and ''The Advanced Leadership Institute in Judicial Education'' (University of Memphis: SJI–91–021)

''Faculty Development Instructional Program'' from ''Curriculum Review'' (National Judicial College: SJI–91–039)

Orientation and Mentoring of Judges and Court Personnel

''Manual for Judicial Writing Workshop for Trial Judges'' (University of Georgia/Colorado Judicial Department: SJI–87–018/019)

''Legal Institute for Special and Limited Jurisdiction Judges'' (National Judicial College: SJI–89–043, SJI–91–040)

''Pre-Bench Training for New Judges'' (American Judicature Society: SJI–90–028)

''A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts'' (Arizona Supreme Court: SJI–90–078)

''Court Organization and Structure'' (Institute for Court Management/National Center for State Courts: SJI–91–043)

''Judicial Review of Administrative Agency Decisions'' (National Judicial College: SJI–91–080)

''New Employee Orientation Facilitators Guide'' from ''The Minnesota Comprehensive Curriculum Design and Training Program for Court Personnel'' (Minnesota Supreme Court: SJI–92–155)

''Magistrates Correspondence Course'' (Alaska Court System: SJI–92–156)

''Computer-Assisted Instruction for Court Employes'' (Utah Administrative Office of the Courts: SJI–94–012)

''Bench Trial Skills and Demeanor: An Interactive Manual'' (National Judicial College: SJI 94–058)

''Ethical Issues in the Election of Judges'' (National Judicial College: SJI–94–142)

Juveniles and Families in Court

''Innovative Juvenile and Family Court Training'' (Youth Law Center: SJI–87–060, SJI–89–039)

''Fundamental Skills Training Curriculum for Juvenile Probation Officers'' (National Council of Juvenile and Family Court Judges: SJI–90–017)

''Child Support Across State Lines: The Uniform Interstate Family Support Act'' from ''Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum.'' (ABA Center on Children and the Law: SJI 94–321)

Strategic and Futures Planning

''Minding the Courts into the Twentieth Century'' (Michigan Judicial Institute: SJI–89–029)

''An Approach to Long-Range Strategic Planning in the Courts'' (Center for Public Policy Studies: SJI–91–045)

Substance Abuse

''Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel'' (Education Development Center, Inc.: SJI–90–051)

''Good Times, Bad Times: Drugs, Youth, and the Judiciary'' (Professional Development and Training Center, Inc.: SJI–91–095)

''Gaining Momentum: A Model Curriculum for Drug Courts'' (Florida Office of the State Courts Administrator: SJI–94–291)

''Judicial Response to Substance Abuse: Children, Adolescents, and Families'' (National Council of Juvenile and Family Court Judges: SJI–95–030)

Appendix IV—Illustrative List of Replicable Projects

The following list includes examples of projects undertaken with support from SJI that might be—or in some cases have been—successfully adapted and replicated in other in other jurisdictions. *Please see Section II.C.1. for information on submitting a concept paper requesting a grant to replicate one of these or another SJI-supported project.* A list of all SJI-supported projects is available from the Institute and on the Institute's website —www.clark.net/pub/sji.

Alternative Dispute Resolution

Computerized Citizen Intake and Referral Service

Grantee: District of Columbia Courts, Contact: Charles Bethell, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–1479, Grant No: SJI–93–211

Application of Technology

File Transfer Technology Application in Use of Court Information

Grantee: South Carolina Bar, Contact: Yvonne Visser, 950 Taylor Street, PO Box 608, Columbia, SC 29202–0608, (803) 799–6653, Grant Nos: SJI–91–088; SJI–91–088–P93–1; SJI–91–088–P94–1

Managing Documents With Imaging Technology

Grantee: Alaska Judicial Council, Contact: William T. Cotton, 1029 W. Third Avenue, Suite 201, Anchorage, AK 99501–1917, (907) 279–2526, Grant No: SJI–92–083

Automated Teller Machines for Juror Payment

Grantee: District of Columbia Courts, Contact: Philip Braxton, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700, Grant No: SJI–92–139

Children and Families in Court

A Day in Court: A Child's Perspective

Grantee: Massachusetts Trial Court, Contact: Hon. John Irwin, 2 Center Plaza, Boston, MA 02108, (617) 742–8575, Grant No: SJI–91–079

Parent Education and Custody Effectiveness (PEACE) Program

Grantee: Hofstra University, Contact: Andrew Shephard, 1000 Fulton Avenue, Hampstead, NY 11550–1090, (516) 463–5890, Grant No: SJI–93–265

Court Management and Planning

Measurement of Trial Court Performance

Grantee: Washington Administrative Office for the Courts, Contact: Yvonne Pettus, 1206 S. Quince Street, Olympia, WA 98504, Grant No: SJI–91–017; SJI–91–017–P92–1

Measurement of Trial Court Performance

Grantee: New Jersey Administrative Office of the Courts, Contact: Theodore J. Fetter, CN–037, RJH Justice Complex, Trenton, NJ 08625, Grant No: SJI–91–023; SJI–91–023–P93–1

Measurement of Trial Court Performance

Grantee: Ohio Supreme Court, Contact: Stephan W. Stover, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419, Grant No: SJI–91–024; SJI–91–024–P93–1

Measurement of Trial Court Performance

Grantee: Supreme Court of Virginia, Contact: Beatrice Monahan, 100 North Ninth Street, Third Floor, Richmond, VA 23219, (804) 786–6455, Grant No: SJI–91–042; SJI–91–042–P93–1

Probate Caseflow Management Project

Grantee: Ohio Supreme Court/Trumball County Probate Court, Contact: Susan Lightbody, 160 High Street, NW., Warren, OH 44481, (216) 675–2566, Grant No: SJI–92–081; SJI–92–081–P94–1; SJI–92–081–P95–1

Implementing Quality Methods in Court Operations

Grantee: Oregon Supreme Court, Contact: Scott Crampton, Supreme Court Building,

Salem, OR 97310, (503) 378–5845, Grant No: SJI–92–170

Implementing Strategic Planning in the Trial Courts

Grantee: Center for Public Policy Studies, Contact: David Price, 999 18th Street, Suite 900, Denver, CO 80202, (303) 863–0900, Grant No: SJI–94–021

Courts and Communities

AARP Volunteers: A Resource for Strengthening Guardianship Services

Grantee: American Association of Retired Persons, Contact: Wayne Moore, 601 E Street, NW., Washington, DC 20049, (202) 434–2165, Grant Nos: SJI–88–033 /SJI–91–013

Establishing a Consumer Research and Service Development Process Within the Judicial System

Grantee: Supreme Court of Virginia, Contact: Beatrice Monahan, Administrative Offices, Third Floor, 100 North Ninth Street, Richmond, VA 23219, (804) 786–6455, Grant No: SJI–89–068

Housing Court Video Project

Grantee: Association of the Bar of the City of New York, Contact: Marilyn Kneeland, 42 West 44th Street, New York, NY 10036–6690, (212) 382–6620, Grant No: SJI–90–041

Tele-Court: A Michigan Judicial System Public Information Program

Grantee: Michigan Supreme Court, Contact: Judy Bartell, State Court Administrative Office, 611 West Ottawa Street, PO Box 30048, Lansing, MI 48909, (517) 373–0130, Grant No: SJI–91–015

Arizona Pro Per Information System (QuickCourt)

Grantee: Arizona Supreme Court, Contact: Jeannie Lynch, Administrative Office of the Court, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9554, Grant No: SJI–91–084

Automated Public Information System

Grantee: California Administrative Office of the Courts, Contact: Mark Greenia, Sacramento Superior and Municipal Court, 303 Second Street, South Tower, San Francisco, CA 94107, (916) 440–7590, Grant No: SJI–91–093

Using Judges and Court Personnel to Facilitate Access to Courts by Limited English Speakers

Grantee: Washington Office of the Administrator for the Courts, Contact: Joanne Moore, 1206 South Quince Street, P.O. Box 41170, Olympia, WA 98504–1170, (206) 753–3365, Grant No: SJI–92–147

Pro se Forms and Instructions Packets

Grantee: Michigan Supreme Court, Contact: Pamela Creighton, 611 W. Ottawa Street, Lansing, MI 48909, Grant No: SJI–94–003

Understanding the Judicial Process: A Curriculum and Community Service Program

Grantee: Drake University, Contact: Timothy Buzzell, Opperman Hall, Des Moines, IA 50311, (515) 271–3205, Grant No: SJI–94–022

Court Self-Service Center

Grantee: Maricopa County Superior Court, Contact: Bob James, 201 W. Jefferson, 4th Floor, Phoenix, AZ 85003, (602) 506–6314, Grant No: SJI–94–324

Sentencing

Court Probation Enhancement Through Community Involvement

Grantee: Volunteers in Prevention, Probation and Prisons, Inc., Contact: Gerald Dash, 163 Madison, Suite 120, Detroit, MI 48226, (313) 964–1110, Grant No: SJI–91–073

Facilitating the Appropriate Use of Intermediate Sanctions

Grantee: Center for Effective Public Policy, Contact: Peggy McGarry, 8403 Colesville Road, Suite 720, (301) 589–9383, Grant No: SJI–95–078

Substance Abuse

Alabama Alcohol and Drug Abuse Court Referral Officer Program

Grantee: Alabama Administrative Office of the Courts, Contact: Angelo Trimble, 817 South Court Street, Montgomery, AL 36130–0101, (334) 834–7990, Grant Nos: SJI–88–030/SJI–89–080/SJI–90–005

Substance Abuse Assessment and Intervention to Reduce Driving Under the Influence of Alcohol Recidivism

Grantee: California Administrative Office of the Courts c/o El Cajon Municipal Court, Contact: Fred Lear, 250 E. Main Street, El Cajon, CA 92020, (619) 441–4336, Grant No: SJI–88–029/SJI–90–008

Court Referral Officer Program

Grantee: New Hampshire Supreme Court, Contact: Jim Kelley, Supreme Court Building, Concord, NH 03301, (603) 271–2521, Grant No: SJI–92–142

Appendix V—Judicial Education Scholarship Application Forms

(Form S1)—State Justice Institute Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

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, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $ _____

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 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. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

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.

(Form S2)—State Justice Institute Scholarship Application

Concurrence

I, _____ (Name of Chief Justice or Chief Justice's Designee), have reviewed the application for a scholarship to attend the program entitled _____, prepared by _____ (Name of Applicant) and concur in its submission to the State Justice Institute. 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 VI—Preliminary Budget Form

(FORM E)—LINE-ITEM BUDGET FORM

Category	SJI funds	Cash match	In-kind match
For Concept Papers, Curriculum Adaptation & Technical Assistance Grant Requests			
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:

_____

_____

* Concept papers requesting an accelerated award, Curriculum Adaptation grant requests, and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.

Appendix VII—Certificate of State Approval Form (Form E)

Form B (Instructions on Reverse Side)—State Justice Institute

Certificate of State Approval

The _____ (Name of State Supreme Court or Designated Agency or Council) has reviewed the application entitled _____ prepared by _____ (Name of Applicant) approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____ (Name of Trial or Appellate Court or Agency) as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____
Signature

_____
Date

_____
Name

_____
Title

[FR Doc. 97–21840 Filed 8–19–97; 8:45 am]
BILLING CODE 6820–SC–P

federal register

Wednesday
August 20, 1997

Part III

Department of Energy

48 CFR Part 970

Acquisition Regulation; Department of Energy Management and Operating Contracts; Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB–37

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) published a final rule amending the Department of Energy Acquisition Regulation (DEAR) to incorporate certain contract reform initiatives on June 27, 1997. (62 FR 34842) Among the initiatives is the implementation of DOE's diversity policy, which requires that contractors take appropriate action to develop and meet diversity performance goals as part of their business operations. DOE proposes to adopt a diversity contract clause to ensure uniform implementation of this policy in its management and operating contracts.

DATES: Written comments (1 copy) on this proposal must be submitted by September 19, 1997. A public hearing will be held on September 4, 1997, beginning at 2:00 p.m. local time at the address listed below. Requests to speak at the hearing should be received by 4:30 p.m. local time on September 2, 1997. Later requests will be accommodated to the extent practicable.

ADDRESSES: All comments, as well as requests to speak at the public hearing, are to be submitted to the Office of Executive Secretariat, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585–0101, or (202) 586–4403 (facsimile).

The public hearing will be held at the U.S. Department of Energy, Small Auditorium (Room GJ–015), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC.

The administrative record regarding this rulemaking that is on file for public inspection, including a copy of the transcript of the public hearing and any written public comments received, is located in the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gloria B. Smith, U.S. Department of Energy, Office of Economic Impact and Diversity, 1000 Independence Avenue, SW, Washington, DC 20585–0901, (202) 586–8383, or Romulo L. Diaz, Jr., Esq., U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585–0103, 202) 586–2902.

SUPPLEMENTARY INFORMATION: In its Strategic Plan for Diversity, which was published in 1994, the Department established goals for enhanced partnerships with small, minority and women-owned businesses; minority educational institutions (i.e., Historically Black Colleges and Universities; Hispanic serving educational initiatives; and Native American Institutions); employees; and communities. The Department has articulated on numerous occasions its intent to evaluate contractor performance consistent with DOE policies and authorities as they may be interpreted and implemented in light of *Adarand Constructors Inc.*v.Peña, 115 S. Ct. 2097 (1995). A contract clause is proposed to be added at 970.5204–xx for inclusion in all management and operating contracts, which would implement the Department's diversity policy found at 48 CFR 970.2601(b).

Guidance for the preparation of a diversity plan by a for-profit contractor—originally developed for use with DOE's ''Sample Contract Provisions for Department of Energy Performance Based Management Contracts (Model Contract) with For-Profit Contractors'' and subsequently revised—is reproduced for informational purposes as an appendix to this preamble. Notice of the availability of the Model Contract was published in the *Commerce Business Daily on February 13, 1995.*

Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Paperwork Reduction Act

DOE has determined that the proposed clause requiring submission of a diversity plan by DOE contractors is necessary to implement the diversity policy enunciated at 48 CFR § 970.2601(b). The information in the diversity plan, to be submitted initially upon award of a new contract and updated annually thereafter, will be used by DOE contracting officers to evaluate contractor performance and determine whether DOE's policy of developing innovative strategies to increase opportunities for small, minority and women-owned businesses and educational institutions is being advanced. Approximately 36 management and operating contractors will be subject to the diversity plan. The Department's best estimate is that the burden will average 40 hours per contractor; the total annual burden is estimated to be approximately 1440 hours.

The requirement that DOE contractors submit a diversity plan, which would be established by this DEAR amendment, has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act (PRA), 44 U.S.C. § 3507(d). Under the PRA, the Department must obtain OMB approval of an information collection, and no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control number.

Comments are solicited on the Department's need for this information, whether the information would have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any other suggested methods for minimizing respondents' burden. To ensure consideration by OMB, comments on any aspect of the information collection should be sent within 30 days after publication of this notice to the contact listed at the beginning of this notice and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3019, Washington, DC 20503, Attn: Desk Officer for the Department of Energy.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, the Department has determined that today's regulatory action is categorically excluded from the need to prepare an environmental impact statement or an environmental assessment.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship

between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12988

With regard to the review required by section 3(a) of Executive Order 12988, DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

F. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. §§ 601–612) requires that an agency prepare an initial regulatory flexibility analysis, and publish the analysis or a summary at the time of publication of general notice of proposed rulemaking for the rule. 5 U.S.C. § 603. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b).

DOE certifies that requiring the inclusion of a clause in DOE contracts which requires the contractor to submit a plan that explains its approach and actions to promoting diversity, consistent with Departmental policy, would not have a significant economic impact on a substantial number of small entities. The diversity plan clause would be included in all DOE management and operating contracts, which historically have been cost reimbursement contracts. Thus, DOE believes that this proposed rule, if promulgated, would not have an adverse economic impact on any small entity.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The proposed rule published today does not contain any Federal mandate, so these requirements do not apply.

Appendix—Model Contract Guidance for Preparation of Diversity Plan

This Guidance is to assist the contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues may already be addressed in the contract. To the extent these issues are already addressed in a contract, the Contractor need only cross reference the location.

Work Force

This contract includes clauses on Equal Opportunity and Affirmative Action. The Contractor should discuss its policies and plans for implementation of these clauses in its operations. If the Contractor already has procedures in place, these should be discussed and copies provided.

Educational Outreach

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may already be discussed in the proposal submitted for this contract or in the contract itself and could include: educational assistance allowances, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any programs supporting Historically Black Colleges and Universities, Hispanic Serving Institutions and Native American Institutions.

Community Involvement and Outreach

An offeror's proposal or this contract may include a section dealing with community involvement and outreach activities. In that event, those sections may be cross referenced and do not need to be repeated. Contractor community relations activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

Subcontracting

If appropriate to the contractor, the contract will contain FAR 52.219–9, ''Small, Small Disadvantaged, and Woman-owned Small Business Subcontracting Plan'' (Aug. 1996) and other small business related clauses. Additionally, the RFP may have contained additional guidance on small business subcontracting. The Contractor should briefly summarize its subcontracting plan. If the Contractor is participating, or plans to participate, in the Department's Mentor-Protégé Program, this involvement, or planned involvement, should be summarized. Information concerning its subcontracting plans already submitted and approved do not need to be redeveloped or renegotiated.

Economic Development (Including Technology Transfer)

Many of the Department's contracts include clauses dealing with technology transfer. Planning or activities developed under such clauses may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business, small disadvantaged businesses, or woman-owned small businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on August 13, 1997.

Stephen D. Mournighan,

Director, Office of Management Systems, Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 162 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) and Sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

2. Subsection 970.2602–2 is amended by redesignating the current paragraph as paragraph (a), and by revising the title and adding a new paragraph (b) to read as follows:

970.2602–2 Contract clauses.

* * * * *

(b) The Contracting Officer shall insert the clause at 48 CFR (DEAR)

970.5204-xx Diversity Plan in management and operating contracts.

3. Subpart 970.52 is amended to add section 970.5204-xx to read as follows:

970.5204-xx Diversity Plan.

As prescribed in 48 CFR (DEAR) 970.2602–2(b), insert the following clause.

Diversity Plan

(Month and Year TBE)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract. The contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix ____. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) economic development (including technology transfer).

[FR Doc. 97–21963 Filed 8–19–97; 8:45 am]

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August 20, 1997

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Parts 3400, 3470, and 3480

Logical Mining Units in General, LMU Application Procedures, LMU Approval Criteria, LMU Diligence, and LMU Operations Administration; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3470, and 3480

[WO–320–1320–02–24–1A]

RIN 1004–AD12

Logical Mining Units in General; LMU Application Procedures; LMU Approval Criteria; LMU Diligence; and Administration of LMU Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending the regulations that pertain to formation and administration of logical mining units (LMUs) by limiting the inclusion in an LMU of Federal coal leases that have not produced commercial quantities of coal in the first 8 years of their 10-year diligent development periods, setting forth the factors BLM will consider in reviewing an LMU application, and narrowing the range of possible starting dates for an LMU's 40-year mine-out period. BLM is also modifying the definition of ''producing'' to limit the circumstances in which it considers a Federal coal lease ''producing'' and the leaseholder thereby qualified to acquire additional Mineral Leasing Act leases and limit the aggregate duration of temporary interruptions in coal severance. BLM is taking this action to ensure that LMUs are approved and administered only for the purpose of developing Federal coal reserves consistent with the goals of the Federal Coal Leasing Amendments Act. This action will prevent the use of LMUs to extend the diligent development period of a Federal coal lease unless the operator or lessee demonstrates measurable and prudent progress toward production of the Federal coal reserves. BLM is also implementing a ruling by the Federal District Court for the District of Columbia that struck down a provision allowing extension of the 3-year submission requirement for resource recovery and protection plans.

DATES: This rule is effective September 19, 1997.

FOR FURTHER INFORMATION CONTACT: William Radden-Lesage, Mining Engineer, Solid Minerals Group (WO–320), Bureau of Land Management, Mail Stop-501LS, 1849 ''C'' Street N.W., Washington, D.C. 20240; or by telephone at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of Final Rule and Response to Comments

III. Procedural Matters

I. Background

The Mineral Leasing Act of 1920 (MLA) gives the Secretary of the Interior authority to offer lands containing deposits of coal owned by the United States for leasing and award leases (30 U.S.C. 201(a)(1)). The Secretary is also authorized to prescribe necessary and proper rules and regulations to carry out the purposes of MLA (30 U.S.C. 189). Due to concern about the number of Federal coal leases that were being held and not developed, Congress amended MLA by passing the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Pub. L. 94–377. To discourage the speculative holding of Federal coal leases and encourage the development of leased coal, FCLAA established production requirements for leases and consequences for lessees when those requirements are not met. Section 7(a) of MLA, as amended by FCLAA, requires that a lessee produce coal in ''commercial quantities'' within 10 years of a lease's issuance or, for a lease issued before the August 4, 1976 enactment of FCLAA, within 10 years after the lease becomes subject to section 7 (30 U.S.C. 207(a)). Section 7(b) of MLA, as amended by FCLAA, requires each lease to be subject to the conditions of diligent development and continued operation, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee (30 U.S.C. 207(b)). BLM has interpreted the reference to a condition of diligent development in section 7(b) to be satisfied by compliance with the obligation to produce in commercial quantities within 10 years in section 7(a). BLM's regulations define ''commercial quantities'' as one percent of a lease's recoverable coal reserves (43 CFR 3480.0–5(a)(6)). If a lease does not achieve commercial production within the 10 years provided in section 7(a) of MLA, as amended, the lease terminates.

The BLM regulations implementing the ''continued operation'' requirement of section 7(b) of MLA, as amended by FCLAA, require a lessee to annually produce an average of one percent of the recoverable reserve base after the lease has achieved diligent development (43 CFR 3480.0–5(a)(8) and 3483.1(a)). Alternately, the lessee may apply for a suspension of the continued operation requirement on the basis of payment of advance royalty (43 CFR 3483.4) or on the basis of strikes, the elements or casualties not attributable to the lessee (43 CFR 3483.3) See 30 U.S.C. 207(b).

Section 2(a)(2)(A) of MLA, as amended by FCLAA, requires that holders of coal leases be disqualified from receiving additional mineral leases under MLA if the lessee has held and continues to hold coal leases for more than 10 years (not counting years prior to passage of FCLAA on August 4, 1976) without producing coal in commercial quantities (30 U.S.C. 201(a)(2)(A)), except as provided in 30 U.S.C. 207(b). Pub. L. 99–190 extended the effective date of section 2(a)(2)(A) of MLA to December 31, 1986. The effect of the reference to section 207(b) is to create two exceptions to the producing requirement. One is for strikes, the elements, or casualties not attributable to the lessee, and the other is when continued operation is suspended by the payment of advance royalties.

Section 2(d) of MLA, as amended by FCLAA, also authorizes the formation of LMUs (30 U.S.C. 202a). An LMU is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner with due regard to conservation of the coal reserves and other resources. An LMU may consist of one or more Federal leaseholds and may include intervening or adjacent lands in which the United States does not own the coal resources. All the lands in an LMU must be contiguous, under the effective control of a single operator, and able to be developed and operated as a single mining operation. Consolidation of leases into an LMU will only take place after a public hearing, if requested by any person who may be adversely affected. The Secretary of the Interior may approve an LMU if he determines that formation of the LMU enhances maximum economic recovery of the Federal coal reserve.

An LMU is commonly used when the geologic characteristics of a coal deposit cross lease or ownership boundaries. A logical and efficient mining sequence in such cases would also span the lease or ownership boundaries. An LMU fosters maximum economic recovery and conservation of Federal coal reserves by facilitating a logical mining sequence in terms of the coal deposit or deposits as a whole, rather than within only a specific lease or property boundary. In areas where the coal ownership pattern is disjointed, such as the checkerboard land-ownership patterns in the western United States, an operator may develop several contiguous coal tracts owned by or leased from different entities as a single mining operation. Without the LMU, a mine operator would, in most

cases, have to develop the oldest Federal coal lease first, regardless of the geology of the deposit or the most logical development plan, simply to comply with the diligent development requirements of section 7(b) of MLA. Inefficient mining sequences do not contribute to the goals of maximum economic recovery of Federal coal reserves and conservation of the resource. For this reason, section 2(d)(3) of MLA authorizes the Secretary to construe diligent development, continued operation and production occurring on one lease in the LMU as occurring on all of the Federal leases in the LMU (30 U.S.C. 202a(3)).

LMUs are an important part of the Federal Coal Management Program. As of September 30, 1996, BLM has approved 49 LMUs, which include 180 of the 389 outstanding Federal coal leases. While LMUs are a critical tool to efficiently manage Federal coal resources, BLM has determined that, in some circumstances, forming LMUs under the existing regulations could have the effect of circumventing lease-specific production requirements mandated by FCLAA. BLM's existing LMU regulations at 43 CFR 3480.0–5(13)(ii) provide that the 10-year diligent development requirement for an LMU begins on the effective date of the Federal coal lease that was most recently issued or readjusted after passage of FCLAA, but preceding approval of the LMU. The existing regulations at 43 CFR 3475.6(b) provide that the LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. Therefore, an operator holding a lease that is about to terminate for failure to meet diligent development could effectively extend the diligent development period for the lease by forming an LMU that combines the older lease with a newer lease. BLM believes that forming an LMU for the sole purpose of extending the diligent development period of a lease, without evidence that the lessee is prudently pursuing development of a mine, is contrary to the intent of MLA, as amended by FCLAA.

In addition, BLM's existing regulations at 43 CFR 3472.1–2(e)(6)(ii)(E) provide that the holder of a lease in an LMU meets the production requirements of section 2(a)(2)(A) of MLA, as amended, whenever the LMU is meeting the diligent development or continued operation requirements specified in the LMU stipulations of approval. Thus, the holder of a non-producing lease could avoid the section 2(a)(2)(A) prohibition on obtaining additional leases by forming an LMU, even if the LMU is not actually producing any coal, as long as the LMU stipulations are being met. Forming an LMU supersedes the lease-specific diligence requirement and starts a new 10-year diligence period for the LMU as a whole. A non-producing LMU can be considered to be in compliance with its diligent development requirement until the end of its 10-year diligence period. It is only when the diligent development period ends without the LMU having achieved production of commercial quantities that it would be considered out of compliance. Such an outcome frustrates the intent of FCLAA by nullifying the penalty provided in section 2(a)(2)(A) of MLA for holding a lease without producing any coal.

Out of concern for abuse of the regulations, BLM published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on December 10, 1993 (58 FR 64919), notifying the public that BLM was considering revising the regulations relating to LMUs for coal operations. The ANPR solicited public comments to assist in the preparation of proposed regulatory changes that would place greater emphasis on the stewardship of Federal coal resources and ensure that they are developed in an efficient, economical, and orderly manner with due regard to the conservation of coal reserves and other resources. BLM received 17 comments on the ANPR. Based on its analysis of the issues and the comments received, BLM determined that:

(1) the existing regulations that allow LMU diligent development requirements to supersede lease-specific diligence implement the intent of Congress in enacting the LMU provisions of FCLAA;

(2) tying the beginning of an LMU's diligent development period to the effective date of the most recent Federal lease remains appropriate;

(3) the current procedure of allowing an LMU to be effective as early as the date that a complete LMU application is submitted should be continued;

(4) the regulations should not be amended to require that at least one Federal lease in an LMU be producing;

(5) where a proposed LMU would include a lease that has not met diligent development requirements within 8 years after its issuance, it is appropriate to require that at least some part of the proposed LMU be covered by a pending administratively complete application or an approved application for a Surface Mining Control and Reclamation Act (SMCRA) permit in order for BLM to approve the LMU; and

(6) the definition of ''producing'' at 43 CFR 3400.0–5(rr)(6) needs some clarification to minimize the opportunity to circumvent the intent of section 2(a)(2)(A) of MLA.

A complete summary and analysis of the comments on the ANPR is in the preamble to the proposed rule published on December 28, 1994 (59 FR 66874).

During 1993 and early 1994, the General Accounting Office (GAO) was conducting an investigation of BLM's coal leasing program. In September 1994, GAO published a report of their findings entitled, ''Mineral Resources: Federal Coal-Leasing Program Needs Strengthening'' (GAO/RCED–94–10). The GAO report focused on two actual cases, one involving a large non-producing lease that was combined with a much smaller, more recently issued lease to form an LMU just before the larger lease would have terminated for lack of diligence. The other case involved a holder of a non-producing lease included in an LMU that was idle (not producing coal) and that had not yet produced sufficient quantities of coal to meet the commercial quantities requirement for the LMU. The lease holder applied for and obtained a number of other MLA leases while the LMU was not producing coal. To address these situations, GAO recommended BLM amend existing regulations to (1) ensure that lessees holding pre-FCLAA leases will not be issued mineral leases under MLA unless they have met the coal production requirements that FCLAA added to MLA and (2) provide criteria that BLM can use to determine whether the formation of an LMU is consistent with FCLAA's goals of discouraging speculation and encouraging the development of Federal coal leases. GAO also recommended that, for each LMU approved, BLM document how the approved LMU meets these regulatory criteria (GAO/RCED–94–10, p. 32).

Subsequently, BLM published the LMU proposed rule in the **Federal Register** on December 28, 1994 (59 FR 66874). Comments were accepted through March 29, 1995. BLM received comments from 14 entities as follows: Coal industry groups submitted 10 comments, 1 comment was from a State governor, 2 comments were from environmental groups, and 1 comment was from an individual. As discussed in the next part of the preamble to this final rule, BLM gave full consideration to all comments received. Any substantive changes in the final rule from what was proposed are identified in the following detailed discussion of the final rule.

II. Discussion of Final Rule and Response to Comments

A. Legal Basis for the Final Rule

Under the MLA, as amended by FCLAA, the Secretary of the Interior has the authority to ''prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of [the law]'' (30 U.S.C. 189). Under the Federal Land Policy and Management Act of 1976 (FLPMA), the Secretary, ''with respect to public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands'' (43 U.S.C. 1740). For the reasons set forth below, BLM believes that this final rule is consistent with the letter and intent of sections 2 (a), (b), (d) and 7 of MLA (30 U.S.C. 201, 202a, and 207), as well as the general purposes of MLA, FCLAA, and FLPMA.

With the enactment of FCLAA, the regulations governing the Federal coal program must implement the express intent of Congress to discourage speculation in Federal coal leases. This intent is embodied within 30 U.S.C. 201 and 207. Also, see H.R. Rep. No. 94–681, 94th Cong., 1st Sess., 14–15 (1975). The twin goals of encouraging development of Federal coal resources and limiting speculation are not mutually exclusive. When Federal coal leases are obtained and held for long periods without production, or without legitimate steps toward production, the efficient, economic and orderly development of the resource is precluded. When those who are interested in simply holding leases are discouraged from doing so, or are encouraged to relinquish their leases, to the extent that others have an opportunity to develop those properties, the development goal is met. BLM's goal, and challenge, in this rule is to establish some prudent constraints on lease holders that will be disincentives to speculation, and at the same time, to avoid imposing the kind of constraints that will be disincentives to development and production, taking into account the dynamic nature of the coal industry.

There is no question that under BLM's current coal management regulations the proportion of Federal leases actually producing coal has increased. At the time that FCLAA was passed 20 years ago, only about 10 percent of Federal coal leases were producing. Currently, the figure is close to 35 percent. BLM believes, however, that the aggregate proportion of producing leases is not determinative in deciding whether changes to the regulations are necessary. Each lease or LMU represents a specific set of unique facts and circumstances owing to the geology of the coal deposit, the qualities and characteristics of the coal, the proximity to the transportation network, the existence of markets, and many other technical and socio-economic factors. Decisions of lessees whether to form an LMU and decisions by BLM approving LMUs are made on a case-by-case basis. BLM has to look at the outcomes of individual cases to see whether its regulations are working properly.

Two recent cases shed light on whether our regulations are working the way they were intended to work. These are the two cases described in the GAO report, discussed above. In the Rocky Butte case, one month before a large non-producing lease was scheduled to terminate, it was combined with a newer small lease into an LMU, extending the diligence date for 10 more years. In the Clovis Point case, the holder of a non-producing lease that had been held for more than 10 years was found to be qualified under section 2(a)(2)(A) to obtain additional leases by virtue of the fact that the non-producing lease had been included in an LMU that was in compliance with the LMU stipulations of approval. Thus, in the first case, application of the statutory penalty for failure to achieve diligent development (termination of the lease) was stymied by LMU formation that extended the diligent development period. In the second case, the statutory penalty for failure to produce coal from leases (disqualification from obtaining additional leases) was stymied by LMU formation that applied the LMU diligence requirements as established by the LMU stipulations of approval to all leases in the LMU.

BLM believes that the outcomes of these two cases are not consistent with the spirit and intent of FCLAA. Because its current regulations do not prevent this type of outcome from occurring again in the future, BLM believes that its regulations should be changed. The final rule adopted today is consistent with the view that BLM must prevent outcomes such as those described above from happening again. As described in the section-by-section analysis that follows, BLM is adopting provisions that are focused on preventing specific kinds of results while avoiding, to the extent possible and foreseeable, unintended negative impacts on legitimate producers of Federal coal. Based on BLM's analysis of the issues involved, taking into account the purposes of the statutes and the administrative record of this rulemaking, including comments received, this final rule is a proper and reasonable interpretation of the MLA, as amended.

B. General Comments

Several comments expressed support for the overall thrust of the rules and BLM's effort to clarify and tighten up the current Federal coal leasing LMU regulations. One commenter was concerned by BLM's past practice of issuing new MLA leases to a lessee who is not in compliance with section 2(a)(2)(A) of MLA and concluded that this practice must stop. Another comment expressed agreement with the recommendation from the GAO report that the Secretary of the Interior cease issuing additional MLA leases to companies that are not qualified under FCLAA. BLM believes that this rule will significantly reduce the chance that a lessee could abuse section 2(a)(2)(A) of MLA, as amended by FCLAA, by obtaining additional MLA leases.

However, most comments, submitted by members of the coal industry, were not supportive of the proposed rule. Specific concerns or comments are addressed in the analysis of each respective topic or subsection. These comments generally requested that the proposed rule be withdrawn. BLM remains committed to encouraging diligent development of Federal coal and reducing the potential for speculation. However, after comprehensive review of all comments, BLM has made some changes to the proposed rule. Those changes are discussed in detail below.

Several comments expressed concern that BLM had not established a clear need for the proposed rule change. Several other comments expressed an opinion that the current regulations were entirely adequate and there was no need for the proposed regulatory changes. However, as outlined in the GAO report discussed above, there remains a potential for abuse of the current regulations that is not consistent with FCLAA's goal of discouraging speculation and encouraging diligent development of Federal coal.

Several comments addressed the relationship of the proposed rule to the intent of FCLAA. One comment said that the proposed rule is not compatible with FCLAA's intent to reduce the possibility of speculation. One comment noted the marked increase in the number of Federal coal leases actually producing coal since enactment of FCLAA as evidence of the effectiveness of the current regulations and FCLAA to reduce speculation. Another comment asserted that the intent of FCLAA was confined to preventing the holding of a

lease without development, and so long as the lease or LMU had been developed, the intent of FCLAA was satisfied. Another comment said that there is no evidence to indicate that the speculative concerns of Congress have not been adequately resolved by FCLAA. BLM agrees that FCLAA has reduced the potential for speculation with Federal coal reserves. However, questions concerning the effectiveness of FCLAA are beyond the scope of this rulemaking. This rulemaking addresses only the effectiveness of the regulations to discourage speculation and encourage production as intended by FCLAA. As mentioned above, the overall percentage of leases that are producing is not determinative as to whether the regulations should be changed. BLM disagrees with the comment that if a lease or LMU had been developed, FCLAA is satisfied. FCLAA contains specific requirements that must be satisfied before compliance with FCLAA is achieved. BLM concurs with the GAO findings that there are weaknesses in the current regulations that need to be addressed.

One comment discussed the relationship between diligent development and speculation. The comment said that the apparent extension of the diligence period when an older lease is combined with a younger lease in an LMU is not speculation as addressed by FCLAA because formation of an LMU often involves tradeoffs such as the 40-year mine-out requirement and inclusion of non-Federal coal reserves in determining commercial quantities. BLM agrees that for leaseholders who are producing or plan to produce Federal coal, there are some tradeoffs associated with LMU formation. However, for those who are apparently holding leases without any current intention of producing coal, imposition of the 40-year mine-out period and increasing the commercial quantities amount are not tradeoffs. Clearly, if you have no current intention of mining the coal and are holding a lease for the purpose of selling it at a profit, you are not going to be greatly concerned about how much time you have to mine the coal or the amount of coal you must mine each year. You are more concerned, however, about being able to hold the lease for 10 more years by including it in an LMU. To the speculator, the advantage of substituting a new diligence period vastly outweighs any drawbacks associated with the obligation to mine the larger reserves of the LMU in 40 years.

Several comments expressed concern that the proposed rule would restrict the flexibility the lessee has under the current regulations. One comment noted that ''these unyielding requirements call for more flexibility, not less.'' Another comment said ''the Federal regulations must provide sufficient flexibility to allow * * * mak[ing] legitimate business decisions while still protecting the public interest in the coal resources owned by the United States.'' Another comment noted that arbitrary limits in the proposed rule ignore the current practical realities confronted by the lessee/operator. As addressed in analysis of specific sections, some of the ''unyielding requirements'' of the proposed rule have been modified to provide some additional flexibility. However, such flexibility must be within the limits established by the statute. BLM believes the final regulations achieve a careful balance between discouraging speculation while at the same time encouraging diligent development.

Several comments expressed concern that the GAO report is, in part, a supporting document for this rulemaking. One comment questioned using the conclusions of the GAO to support the proposed rule because the Department of the Interior's official response to the GAO is not consistent with the conclusions of the GAO report. In addition, the comment was concerned that the GAO report has not been subject to public review and comment sufficient to warrant its serving as the primary basis for the proposal. Another comment asserted, ''We have concluded that this GAO criticism was ill-advised and unfounded, and it appears to have been designed to fulfill a political agenda adverse to the interests of * * * federal coal development.'' This comment continued, ''We urge BLM not to depend upon the GAO Report to justify these new regulations, because it cannot withstand the light of a full independent review.''

The GAO report has been included in the Administrative Record as support for this rule. Commenters were free to dispute the foundations or conclusions of the report. BLM has considered both the substance of the report and criticisms by commenters in formulating this rule. Also, this final rule is consistent with the response to GAO from the Assistant Secretary, Land and Minerals Management, dated April 12, 1994. In the response to GAO, the Assistant Secretary noted that ''BLM's interpretation (of FCLAA) was a matter of policy formulated by previous Administrations that met the letter of the law but that appeared not to be in concert with the major goal of FCLAA, which was to reduce speculation.'' See GAO/RCED–94–10, p. 77. The response also stated that ''the policy could be amended prospectively at any time by following the normal notice and comment rulemaking process.'' *Id.* BLM considers the final rule to be within the scope of MLA, as amended by FCLAA, and BLM's rulemaking authorities.

One comment asserted that ''defin[ing] 'producing' in a manner designed to punish a company which has properly suspended mining because of poor market conditions'' could have ''takings'' implications. BLM does not agree that the rule ''punishes'' companies, nor that it has takings implications. Under the commenter's scenario, if BLM defined ''producing'' in such a way that a particular company was disqualified from obtaining additional leases, no taking would occur. BLM's action would preclude the company from obtaining additional leases but would not deprive the company from the full enjoyment of any rights it already possesses under existing leases. A lease holder does not have a contractual or property interest in acquiring additional leases at some future time. See *Natural Resources Defense Council* v. *Jamison,* 815 F.Supp. 454, 470 (1992). To suggest that a compensable claim arises from an action that precludes one from obtaining additional rights extends the concept of takings beyond the scope of current judicial interpretation.

The same commenter went on to assert that any action ''which could result in the taking of leases from competent mine operators * * * could in turn represent a taking of potential royalties and tax revenues from [State and local governments].'' BLM disagrees. Although each takings claim has to be decided on its own merits, BLM believes that the rights attendant to a coal lease are conditioned on compliance with the law and regulations. When noncompliance occurs, BLM has the authority to impose the penalties provided for by MLA. In some cases, BLM has no discretion regarding the nature of the penalty. For example, MLA provides that ''[a]ny lease which is not producing in commercial quantities at the end of ten years shall be terminated'' (30 U.S.C. 207). As to the question of whether State or local governments have a ''right'' to the revenue stream associated with a particular lease, the commenter construes a possible diminishment of future revenues as a compensable taking. BLM does not agree that States have such a claim. Under 30 U.S.C. 191, the Secretary has an obligation to pay an appropriate share of the money received

as a result of the production of coal. The obligation does not arise until the Secretary receives the money; no obligation to the States exists to maintain the revenue stream associated with Federal mineral leasing. Moreover, any impacts of these rules on revenue streams is purely speculative.

Finally, the same commenter went on to assert that a regulation that ''would limit the leasing of new federal coal or limit the number of potentially qualified bidders for new federal coal represents a 'taking of potential bonus bid revenues' from [the State] which would otherwise be available.'' BLM disagrees. As discussed in response to the commenter's first assertion, the courts have interpreted the Fifth Amendment prohibition on uncompensated takings as being based on a deprivation or limitation of rights that a person already possesses. Takings are not based on a potential deprivation or limitation of rights that a person may or may not possess at some time in the future. In summary, BLM does not believe that the regulations adopted today have takings implications.

Several comments expressed concern that the generally negative response to the ANPR appeared to be ignored by BLM. The volume of opposing comments does not, in and of itself, overshadow BLM's responsibility to implement FCLAA. BLM believes the final rule properly takes into account the views of commenters in implementing the statutory requirements of FCLAA and MLA.

One comment said BLM failed to describe the need for the changes or how the rule will reduce speculation. The final rule discourages speculation in a number of ways. For example, the previous open-ended definition of the term ''producing'' allowed speculative holding of coal leases without limit on the nature or duration of mine shutdowns. BLM believes holding a Federal lease for an extended period while both the lease and the LMU which contains the lease fail to produce coal in sufficient quantities to meet diligence requirements is speculation that Congress intended to reduce by enactment of FCLAA. The promise of future severance of coal, as evidenced by the presence of mining equipment with the capability of severing coal, is not an acceptable substitute for the actual severance of coal without an objective standard to assure that severance recommences. In addition, this rule discourages the formation of LMUs created to allow speculative holding of non-producing coal leases. Regulations that allow formation of an LMU consisting of an older Federal coal lease that is close to termination for failure to meet diligence requirements with other coal reserves which also have not produced coal, without any evidence of prudent progress of developing a mine on either area, circumvent sections 7(a) and 2(a)(2)(A) of MLA and allow speculation. Chapter 2 of the GAO report provides a detailed discussion of the relationship between speculation and formation of an LMU. The detailed analysis of each section of the final rule provides additional information concerning how the final rule will specifically serve to reduce the potential for speculation.

One comment expressed concern that Executive Order 12988 of February 11, 1994, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' must be considered and implemented in any final rule. This Executive Order requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high or adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States. As discussed below, BLM believes that this final rule complies with Executive Order 12988.

A logical mining unit can be formed only after a Federal coal lease has been issued. BLM must comply with all applicable environmental and procedural requirements, which include many opportunities for public comment and collection of environmental data, before the lease is issued. This final rule does not alter the lease issuance process. The logical mining unit itself cannot be approved without providing ample opportunity for public comments and, if requested, a public hearing (43 CFR 3481.2). The mining operation must have a SMCRA mining permit before mining operations can begin (30 U.S.C. 1256(a)). Exploration operations, permitted through BLM, must also comply with established procedures to safeguard the environment. Once mining operations begin, the lessee/operator is generally required to continuously monitor the environment in and around the mine for potential adverse effects. These provisions for public participation and environmental protection adequately ensure consideration of impacts on minority or low-income communities. Thus, BLM believes that there are ample requirements and safeguards already in place to assure compliance with Executive Order 12988.

One commenter said that the proposed regulations were ''at odds with the President's Regulatory Reinvention Initiative.'' This comment said that the proposed regulation cut against the initiative's objectives to eliminate or revise obsolete regulations and seek the views of the regulated community. BLM does not agree with this comment. This final rule revises the regulations to comply with the letter and intent of MLA, as amended by FCLAA, after inviting comment and informing the regulated community of our intentions. BLM published an ANPR and a proposed rule providing the regulated community ample opportunity to provide input into the regulatory process. These regulations are written to implement the MLA, as amended by FCLAA, and have been modified in response to comments from the regulated community. BLM believes that the regulations comply with the President's regulatory reinvention initiative which requires ''sensible regulations without sacrificing rational and necessary protection.''

In the proposal, BLM indicated that the changes to the definition of ''producing'' would take effect 30 days after the final rule is published. BLM specifically solicited comments on whether a longer phase-in period, such as 6 months, is necessary (59 FR 66877). One commenter was concerned that under the proposed rule, BLM would not consider suspension of operations due to loss of a contract or lack of a market for coal to be a qualifying temporary suspension. The commenter proposed that ''the rule take effect a minimum of six months after the final rule is published to allow [the lessee/operator] to come into compliance with these proposed changes.''

As discussed in more detail later in this preamble, the final rule that BLM is adopting today differs from this aspect of the proposal in important ways. The final rule allows qualifying temporary interruptions in coal severance up to one year in aggregate length in the immediately preceding five-consecutive-year period. See final § 3481.4–4. Under the final rule, an operation could temporarily interrupt coal severance for the period specified in final § 3481.4–4 due to loss of contract or lack of market without being disqualified from obtaining additional leases. See final § 3481.4–2(c). The final rule provides lessees/operators significantly more flexibility with regard to temporary interruptions in coal severance than the proposal, which, as the commenter points out, would have excluded suspensions for loss of

contract or lack of market and limited qualifying suspensions to three months in length. These changes address the commenter's concern, and BLM does not believe it is also necessary to extend the period of time between the publication of the final rule and its effective date. Thus, the regulations BLM is adopting today take effect in 30 days.

One commenter objected to the statement in the proposed rule preamble that BLM intended to apply the regulations governing approval of LMUs, under 43 CFR part 3480, subpart 3487, to all LMU applications that were pending or submitted after the date of the proposed rule. The commenter argued that implementation of the rules in this manner would constitute ''an unlawful retroactive application of changes in regulations.'' BLM does not agree that these rules will have retroactive effect. Once the rules become effective 30 days after being published in the **Federal Register**, they govern all subsequent decisions by BLM concerning approval of LMU applications regardless of whether the applications are pending on the effective date of the final rule or submitted after that date. BLM applies the regulations that are in effect at the time it makes the decision on the application. See *Bradley* v. *School Board of City of Richmond,* 416 U.S. 696 (1974), cited with approval in *Illinois South Project, Inc.* v. *Hodel,* 844 F.2d 1286, 1289 (7th Cir. 1988). The fact that an LMU application may have been submitted prior to the change in the regulation does not entitle the applicant to have BLM act on the application on the basis of rules no longer in effect. See *Hunter* v. *Morton,* 529 F.2d 645, 649 (10th Cir. 1976); *Hannifin* v. *Morton,* 444 F.2d 200, 203 (10th Cir. 1971). In response to the comment, however, BLM has decided not to reconsider decisions made after the date of the proposed rule, but before the effective date of these rules.

C. Section-by-Section Analysis of Final Rule and Specific Comments

Part 3400—Coal Management: General

Subpart 3400—Introduction: General. *Section 3400.0–5 Definitions.* The prefatory clause previously stated ''As used in this part,'' and could be interpreted to mean that the definitions listed in § 3400.0–5 applied only to part 3400, and were not applicable to all of the regulations in 43 CFR group 3400, which includes parts 3400, 3410, 3420, 3430, 3440, 3450, 3460, 3470, and 3480. BLM proposed to change the clause to read, ''As used in this group,'' to clarify that the definitions in section 3400.0–5 apply to all of the regulations in Group 3400—Coal Management. BLM is adopting the change to the prefatory clause for the list of definitions at 43 CFR 3400.0–5 as proposed.

One comment expressed concern that the change in the prefatory clause from ''part'' to ''group'' could extend the definition of ''producing'' at § 3400.0–5(rr)(6), for section (2)(a)(2)(A) of MLA, to include ''continued operations'' under section 7 of MLA. However, the prefatory clause at § 3400.0–5(rr) specifically limits this paragraph to, ''For the purposes of section 2(a)(2)(A) of the Act.'' Thus, BLM does not intend the change in the prefatory clause at § 3400.0–5 to extend the definition of ''producing'' under § 3400.0–5(rr)(6) to considerations of ''continued operations'' under section 7 of the MLA, which is defined at 43 CFR 3480.0–5(a)(8).

Section 3400.0–5(rr)(6) Definition of producing. Under the previous definition of *producing,* BLM considered a lease to be producing, for the purposes of lessee qualification under section 2(a)(2)(A) of MLA, whenever coal was actually being severed, or the lessee was operating a mine in accordance with standard industry operating practices. The previous rule also provided an allowance for ''temporary suspension'' of coal severance for reasons that are beyond the reasonable control of the mine operator or lessee. The definition contained several examples of circumstances under which BLM allowed a non-disqualifying ''temporary suspension,'' including, but not limited to, factors such as dragline or other equipment movement, breakdown, or repair; overburden removal; sale of coal from stockpiles; vacations and holidays; orders of governmental authorities; coal buyer's operations of its power plants that require the coal buyer to stop taking coal shipments for a limited duration of time; or severed coal being processed, loaded, or transported from the point of severance to the point of sale. Although the definition stated that it is limited to circumstances beyond the reasonable control of the operator/lessee, several of the examples described circumstances within the operator's control. Thus the rule contained no effective limit on either the type or duration of temporary interruptions under which a mine would be considered ''producing.''

The definition of ''producing'' primarily has relevance for operations that have not yet achieved diligent development, that is, have not produced in commercial quantities within ten years. Operations that have achieved diligence and are subject to continued operation cannot be disqualified from receiving additional leases under the definition of ''producing'' while they remain in compliance with the continued operation requirements. See final § 3472.1–2(e)(6)(D).

BLM proposed that the definition of ''producing'' at section 3400.0–5(rr)(6) be changed to limit the circumstances under which BLM would consider a Federal coal lessee qualified to obtain additional MLA leases. BLM proposed to eliminate the provision that allowed the lease to be considered producing, for the purposes of section 2(a)(2)(A) of MLA, if a mine were operating on the lease or LMU in accordance with standard industry operation practices and proposed limiting temporary suspensions to 3 months. In the proposal, BLM indicated that it believes that the definition had potential for abuse. A lessee could claim that it is producing in accordance with standard industry practices even though, for reasons that are within its control, coal has not been produced from the lease for many years. This result would not serve the purpose of FCLAA to prevent speculation. Several comments expressed support for this aspect of the proposal. Several other comments indicated that removal of the ''standard industry operating practices'' clause from the rule would unduly constrain the ability of BLM to effectively administer the coal program and would not recognize site-specific needs of smaller mines. One comment said that standard industry operating practices must continue as the standard by which BLM makes many of its management decisions.

The final rule eliminates the ''standard industry operating practices'' clause and provides that *producing* means actually severing coal. Under the final rule, BLM also considers a lease producing when the operator/lessee is processing or loading severed coal or transporting it from the point of severance to the point of sale, or coal severance is temporarily interrupted in accordance with 43 CFR 3481.4–1 through 4–4. BLM continues to believe that the open-ended ''standard industry operating practices'' and ''temporary suspension'' clauses of the previous rule could be interpreted to extend the definition of ''producing'' beyond the scope of FCLAA. ''Standard industry operating practices'' and unlimited ''temporary'' suspensions could include things that are clearly outside the range of what is contemplated under FCLAA, such as an open-ended discretionary mine closure.

As discussed later in this preamble in connection with final §§ 3481.4–1 through 3481.4–4, BLM is providing the flexibility requested by commenters by allowing temporary interruptions not exceeding an aggregate of 1 year in the 5-consecutive-year period immediately preceding the date of BLM's determination of lessee qualifications under 43 CFR 3472.1–2. This provision allows operators more flexibility to temporarily interrupt coal severance without penalty under section 2(a)(2)(A) than would have been provided under the proposal, which would have limited the length of a ''temporary suspension'' to 3 months. The final rule also provides flexibility by not limiting a temporary interruption in coal severance to circumstances beyond the control of the lessee/operator.

By its own terms, section 7(b) provides an exception for interruptions caused by ''strikes, the elements, or casualties not attributable to the lessee.'' To the extent that a temporary interruption is caused by a circumstance that meets the standards of section 7(b), BLM has recognized in the final rule that section 7(b) does not afford BLM with the authority to limit that type of interruption to either a 3-month or 1-year period. Therefore, that type of interruption will not lead to disqualification under section 2(a)(2)(A). See the preamble discussion of § 3481.4 below.

However, certain of the circumstances listed in the proposal or this final rule as non-disqualifying temporary suspensions do not fall within the section 7(b) exception because they are not ''casualties not attributable to the lessee.'' Some are not ''casualties'' and some are not beyond the lessee's control.

Nevertheless, BLM continues to believe that such temporary suspensions should not lead to a disqualification under section 2(a)(2)(A). By not defining the term ''producing,'' Congress was silent as to whether and the degree to which temporary interruptions in coal severance should disqualify a lessee from receiving additional leases under section 2(a)(2)(A). BLM has attempted to determine what is reasonable and has so provided in this final rule. See section 3481.4, discussed below. This final rule eliminates the confusing and unnecessary requirement that temporary interruptions be beyond the control of the operator.

As discussed above, BLM's previous rules allowed a lease that is not actually severing coal to be considered ''producing'' when severed coal is being processed, loaded, or transported from the point of severance to the point of sale. BLM proposed to retain this provision and received no comments that specifically addressed this issue. BLM is adopting this provision in the final rule. BLM recognizes that the mining operation consists of more than just the mechanical severance of coal. Coal, once severed, requires processing and transportation prior to it having value to the coal consumer. Severance, processing, and transportation of coal are equally important to the success of the lease or LMU in meeting the producing requirements under section 2(a)(2)(A) of the MLA.

Both BLM's previous rule and the proposal contained definitions of the term ''producing'' that would have delineated the circumstances under which a lease could be considered ''producing'' for purposes of section 2(a)(2)(A) even though coal severance was temporarily suspended. BLM believes that these provisions are regulatory in nature and do not belong in a definition. Therefore, BLM has moved the provisions governing what in the previous rule was a temporary suspension to final §§ 3481.4–1 through 3481.4–4 and included a cross-reference to those sections in the definition of ''producing.'' Please refer to that portion of this preamble for a complete discussion of comments received on that subject, which BLM has designated ''temporary interruption in coal severance'' in the final rule. Thus, the provision that BLM is adopting today simply lists the three circumstances under which a lease may be considered producing: (1) When coal is being severed (that is, being physically removed from the working face to another location); (2) when severed coal is being processed, loaded, or transported from the point of severance to the point of sale; and (3) when coal severance is interrupted in accordance with 43 CFR 3481.4–1 through 3481.4–4.

The proposal would have added a provision that, for the purposes of the definition of ''producing,'' the term ''operator/lessee'' has the meaning set forth in 43 CFR 3480.0–5(a)(28). This was an incorrect cross reference; the term ''operator/lessee'' is actually found at 43 CFR 3480.0–5(a)(27). BLM received no comments concerning this section of the proposed rule. However, in the interest of simplifying its regulations, BLM has decided that it is not necessary to incorporate this cross reference into the final rule. The term ''operator'' is defined at § 3400.0–5(cc).

Part 3470—Coal Management Provisions and Limitations

Subpart 3472—Lease Qualification Requirements. *Section 3472.1–2 Special leasing qualifications.* Section 3472.1–2 sets forth special qualifications that applicants must meet in order to obtain leases. Subparagraph (e)(1)(i) implements section 2(a)(2)(A) of MLA and establishes the general prohibition on issuance of new leases to those who have held a Federal coal lease for 10 years and who are not producing coal from the lease deposits in commercial quantities. The previous provision set forth exceptions to the prohibition, including those in ''paragraph (e) (4) or (5) of this section.'' BLM proposed to revise subparagraph (e)(1)(i) by making some grammatical corrections and adding a clarifying reference to paragraph (e)(6) as an exception to the prohibition. Several comments generally supported the proposed rule. BLM is adopting this provision in the final rule as proposed. Final § 3472.1–2(e)(1)(i) contains a reference to the exception provisions of part 3480. The reference is intended to include suspensions approved under 43 CFR 3483.3 and final § 3481.4–4. See the preamble to § 3481.4–4 below.

BLM also proposed changes to paragraph (e)(6), which contains exceptions to the prohibition on issuing new leases to holders of non-producing leases. In BLM's previous rules, paragraph (e)(6)(ii)(D) established an exception from section 2(a)(2)(A) for leases ''producing in compliance with the diligent development and continued operation provisions of part 3480.'' Paragraph (e)(6)(ii)(E) established a corresponding exception for leases contained in an LMU, if the LMU is producing ''in accordance with the logical mining unit stipulations of approval.'' As explained in the proposed rule preamble, these two provisions allowed a lease or LMU to be considered in compliance with the producing requirement of section 2(a)(2)(A) during the diligent development period, even though the lessee may have held the lease for more than 10 years without producing coal (59 FR 66877). This is exactly the type of abuse identified in the GAO report. See GAO/RCED–94–10, pp. 24–25. BLM believes that a policy which allows a non-producing lease in a non-producing LMU to satisfy the ''producing'' requirement of section 2(a)(2)(A) because it complies with the diligent development requirements undermines the anti-speculation goal of FCLAA and implementation of section 2(a)(2)(A).

For these reasons, BLM proposed to change paragraph (e)(6)(ii)(D) to provide that, in order to protect a lessee from disqualification under section 2(a)(2)(A), a lease must be producing, or a lease that has met its diligent development requirements must be in compliance with its continued operation requirements. Similarly, BLM proposed to change paragraph (e)(6)(ii)(E) to provide that, in order to protect a lessee from disqualification, an LMU must be producing, or be in compliance with its continued operation requirements, in addition to complying with the LMU approval stipulations. BLM is adopting both provisions in the final rule as proposed, with the exception of one editorial change prompted by a comment (discussed below).

One comment suggested that the rule should be written in a more direct style. The comment suggested replacing the phrase ''has produced in satisfaction of'' to ''currently in compliance with'' in both paragraph (D) and (E). BLM agrees that the suggested change improves the clarity of the rule and recognizes that continued operation is based on a rolling 3-year period, for which an operator may be in compliance, but the necessary production may not yet have occurred. An operator has the flexibility to satisfy continued operation by producing a total of 3 percent of the recoverable coal reserves within 3 years, regardless of when production occurs during that 3-year period. Thus, the duration of coal severance is not relevant to meeting the continued operation requirement as long as the operator meets the production requirement on average. Such production satisfies both the continued operation and section 2(a)(2)(A) production requirements. The final rule does not affect the operator's flexibility in meeting the continued operation requirement, where a degree of flexibility is appropriate once diligent development has been achieved. The comment is adopted, and the final rule requires leases and LMUs to be producing, or currently in compliance with the lease-specific or LMU continued operation requirements.

Under final § 3472.1–2(e)(6)(ii)(E), if a Federal lease that is included in an LMU and has been held for more than 10 years is producing or is in compliance with its continued operation requirement, the lessee would remain qualified under section 2(a)(2)(A) of MLA. If a Federal lease that is included in an LMU and has been held for more than 10 years is not producing or is not in compliance with continued operation, but the LMU is producing or is in compliance with its continued operation requirement, the lessee remains qualified under section 2(a)(2)(A) of MLA. However, if a Federal lease that is included in an LMU and has been held for more than 10 years is not producing and is not in compliance with its continued operation requirement, and the LMU is not producing and is not in compliance with its continued operation requirement, the lessee would be disqualified under section (2)(a)(2)(A) of MLA.

One comment disagreed with ''BLM's assertion that for an LMU with a pre-FCLAA lease, [LMU] compliance with [diligent development] is inadequate for lease compliance with the ''producing'' requirement of Section 2(a)(2)(A).'' BLM did not accept this comment. As discussed above, if compliance with the diligent development requirement of section 7 were to be construed as satisfying the requirements of section 2(a)(2)(A), the holding period for readjusted leases could be stretched for an additional 10 years before actual production would have to begin. This is because the diligent development period of the LMU supersedes the lease-specific diligent development period.

One comment noted the Department had previously considered FCLAA to be silent concerning the interplay between section 2(a)(2)(A) and 2(d) of the MLA and concluded that ''the agency's attempt at legislative revisionism, by inserting FCLAA's anti-speculation purposes, remains unpersuasive.'' BLM believes that, where a statute does not directly speak to an issue, the agency that has been delegated rulemaking authority, BLM in this case, has the discretion to adopt a reasonable interpretation that is consistent with the purposes of the statute. Under the discretionary authority granted in section 2(d)(3) of MLA (30 U.S.C. 202a(3)), BLM chose, as a matter of policy, to provide by regulation that production from anywhere within an LMU should be construed as occurring on all Federal leases in the LMU for purposes of diligent development and continuous operation. BLM also chose, as a matter of policy, to provide by regulation that a lessee producing in accordance with the LMU stipulations was not disqualified under section 2(a)(2)(A). For the reasons described above, BLM is now changing its interpretation with regard to section 2(a)(2)(A) to better serve the anti-speculation goals of FCLAA. BLM believes it has articulated a reasonable explanation for why it is doing so. This action is within BLM's discretionary rulemaking authority under MLA as amended and contains a sufficient basis and purpose as required by the Administrative Procedure Act (5 U.S.C. 553).

Part 3480—Coal Exploration and Mining Operations Rules

Subpart 3480—Coal Exploration and Mining Operations Rules: General. *Section 3480.0–5 Definitions.* The proposed rule would have added a new term, ''Logical mining unit recoverable coal reserve exhaustion period,'' which would have been defined as the period of time beginning upon approval of the LMU resource recovery and protection plan and ending when all the recoverable coal reserves are mined out, but not more than 40 years. BLM has decided not to include the definition in the final rule. Based on comments, BLM is adopting a final rule that differs from the proposal with regard to the beginning of the 40-year period for mining out the LMU. The final rule provides flexibility in beginning the 40-year period, because BLM has concluded that a definition that specifies a single beginning point for the 40-year period is not appropriate. See the preamble discussion below concerning § 3487.1 of the final rule.

Subpart 3481—General Provisions. *Section 3481.4 Temporary interruption in coal severance.* As discussed above, BLM also proposed to change the definition of ''producing'' to allow temporary suspension of operations for reasons beyond the control of the lessee/operator without disqualifying the lease holder from receiving new leases. The proposed rule would have restricted a ''temporary suspension'' to not more than 3 months in length and provided a list of qualifying circumstances similar to those included in the previous rule. BLM has decided that the provisions relating to ''temporary suspension,'' which has been renamed ''temporary interruption in coal severance'' in the final rule, are regulatory in nature and should not be included in a definition. Thus, in the final rule adopted today, these provisions are located at final § 3481.4, including §§ 3481.4–1 through 3481.4–4.

Some commenters confused a ''temporary suspension'' for the purposes of determining lessee qualifications under section 2(a)(2)(A) of MLA with lease suspensions authorized under section 7(b) of MLA (30 U.S.C. 207(b)). BLM believes that some of the confusion may have resulted from the proposed ''temporary suspension'' provision which combined administrative exceptions to the definition of ''producing'' with elements of the section 7(b) suspension criteria.

The comments make it evident that using the same or similar terminology for different circumstances is confusing. Therefore, in the final rule, BLM uses the term ''temporary interruption in coal severance'' to refer to periods when a lease or LMU is not severing coal, but the lease holder is still considered to be producing and thus qualified under section 2(a)(2)(A) of MLA to receive additional leases.

Section 3481.4–1 Can I temporarily interrupt coal severance and still be qualified as producing? Final § 3481.4–1 provides that an interruption in coal severance allows a lessee/operator to temporarily halt the extraction of coal for a limited period of time without jeopardizing the lessee/operator's qualifications under section (2)(a)(2)(A) of MLA to receive additional leases. During the period of an interruption in coal severance, BLM still considers a lease or LMU to be producing so as not to preclude the lessee/operator from receiving a new or transferred lease. This section corresponds to the first sentence of proposed § 3400.0–5(rr)(6)(ii)(A), but without the proposed 3-month limit and the restriction to reasons beyond the reasonable control of the operator/lessee. The time limit for temporary interruptions in coal severance is prescribed in final § 3481.4–4 (discussed below).

BLM decided not to restrict temporary interruptions in coal severance to circumstances beyond the reasonable control of the lessee/operator. BLM believes that proposed § 3400.0–5(rr)(6)(ii)(A) was confusing in that it included in the examples of circumstances beyond the lessee/operator's control things that could be within the control of the lessee/operator. For example, equipment movement, overburden removal, and vacations would all appear to be, generally, within a lessee/operator's control.

To remedy the confusion, the final rule allows temporary interruptions in coal severance for any reason, up to the 1-year limit. See final § 3481.4–4. As discussed below, BLM believes that limiting the aggregate duration of interruptions is a much clearer and more effective way to regulate than limiting the types or causes of interruptions. If adopted, the proposal might have resulted in disagreements over whether or not an interruption was caused by a factor beyond an operator's control. Such disagreements are difficult to resolve and rarely increase understanding of, or compliance with, a regulation.

Because the term ''producing'' in section 2(a)(2)(A) of MLA, as amended, (30 U.S.C. 201(a)(2)(A)) is not defined in the statute, BLM has the authority under MLA (30 U.S.C. 189), the MLA for Acquired Lands (30 U.S.C. 359), and FLPMA (43 U.S.C. 1733 and 1740) to adopt a provision defining the term, provided we establish a reasonable connection between the provision and the purposes of the statutes. In this case, the final rule fosters maximum economic recovery of Federal coal reserves and facilitates development of coal reserves in an efficient, economical, and orderly manner by giving operators the flexibility to temporarily interrupt coal severance as necessary due to the unique and dynamic circumstances of each coal mining operation. In addition, the final rule limits abuse through the aggregate time limit. See the preamble discussion of final § 3481.4–4 below. Readers should note that some of the circumstances beyond a lessee/operator's control correspond to the ''casualties not attributable to the lessee'' set forth in section 7(b) of MLA (30 U.S.C. 207(b)). As discussed above, to the extent that an operation is forced to temporarily interrupt coal severance due to casualties not attributable to the lessee, BLM has additional authority under section 7(b) of MLA to consider the interruption a non-disqualifying event under section 2(a)(2)(A)'s producing requirement.

Section 3481.4–2 What are some examples of circumstances that qualify for a temporary interruption of coal severance? Final § 3481.4–2 provides some examples of circumstances that qualify for an interruption in coal severance, including movement, failure, or repair of major equipment, such as draglines or longwalls; overburden removal; adverse weather; employee absences; inability to sever coal due to orders issued by governmental authorities for cessation or relocation of the coal severance operations; and inability to sell or distribute coal severed from the lease or LMU out of or away from the lease or LMU. This section corresponds to proposed §§ 3400.0–5(rr)(6) (ii) and (iii). The final rule differs from the proposal in that we added ''adverse weather'' to the list of qualifying circumstances based on the fact that coal operations sometimes have to temporarily interrupt operations in the winter. We also substituted the term ''employee absences'' in the final rule for ''vacations and holidays'' in the proposal in the belief that a more inclusive term is preferable. For example, ''employee absences'' takes into account situations where employee illness is a factor.

In response to BLM's request in the proposed rule, several commenters suggested additional circumstances in which an interruption in coal severance could be allowed. These additional circumstances included fires, explosions, storms, floods, boycotts, court orders, damage to support facilities or systems, interruptions in coal transportation, strikes, material shortages, and interruptions in delivery of coal initiated by the coal customer. Several comments stated that any attempt to exhaustively list all potential exceptions to ''producing'' is misplaced. One comment suggested that the rule appeared to rely on ''events'' while there might be ''conditions'' that could be the basis of an interruption to operations.

BLM agrees that a list of potential exceptions to ''producing'' can never capture all possible qualifying circumstances. Rather than attempting to establish an exhaustive list of events or conditions that justify a temporary interruption, BLM has decided to adopt in principle the proposed approach by limiting the duration of interruptions. Limiting the duration of interruptions in coal severance is a reliable means that eliminates the complexities of interpretation, is not excessively burdensome, and captures all possible circumstances. Administratively, BLM believes it to be more efficient to regulate the duration of the interruption in coal severance rather than listing all the possible combinations of qualifying criteria. Thus, the final rule simply lists several examples of qualifying circumstances, all of which are subject to the limit established by final § 3481.4–4, discussed below, except for temporary interruptions of less than 14-day duration and section 7(b) suspensions.

Several comments on proposed § 3400.0–5(rr)(6)(ii)(A), which would have included ''dragline or other equipment movement,'' requested that BLM also include examples of underground mining equipment and methods. BLM believes that it would be cumbersome to provide examples applicable to every mining method and all varieties of mining equipment. However, BLM has modified the list of example methods and equipment in corresponding final § 3481.4–2(a) to include examples of both surface (draglines) and underground (longwall) mining equipment. Thus, the item in the proposed rule that read ''dragline or other equipment movement, breakdown, or repair'' is changed to ''movement, failure, or repair of major equipment, such as draglines or longwalls * * *.'' The term ''major equipment'' includes draglines, longwalls, haulage trucks, and conveyor belts, the failure of which

would directly impede coal severance. Dozers, graders, and utility trucks are not examples of major equipment.

Many comments expressed opposition to proposed § 3400.0–5(rr)(6)(ii)(B), which would have added a provision to exclude a lack or loss of market and a lack or loss of a contract as qualifying circumstances for an interruption of coal severance. BLM included this provision in the proposal to address abuses such as maintaining a lease in non-producing status while waiting for a market to develop or for a contract to be negotiated. The comments asserted that the proposed rule would force a lessee/operator to capitulate to a buyer's demands, which could result in the potential bypass of Federal coal reserves. For simplicity and streamlining and based on the commenter's concerns, BLM has decided not to include the proposed provision in this final rule. BLM believes the limit on the duration of interruptions will curb any abuse. BLM continues to believe, however, that loss of a coal contract or market does not constitute a ''casualty'' that would qualify for a suspension under section 7(b) of MLA, as amended. Thus, an operator who stops severing coal because of the loss of a contract or market can qualify as ''producing'' subject to the 1 year in 5 aggregate maximum for temporary interruptions, but would not be entitled to a section 7(b) suspension for loss of a coal contract or market.

Section 3400.0–5(rr)(6)(iii) of the proposal would have included orders by governmental agencies for suspension of coal severance for reasons that are beyond the control and not the fault of the lessee/operator as an example of a qualifying circumstance for an interruption in coal severance. One comment indicated that the proposed rule had a narrow definition and could tend to defeat the purpose for which it was intended. For example, orders of government authorities to relocate coal severance can have as much impact on a lease or LMU as orders for suspension of coal severance. In response to this comment, BLM has added to final § 3481.4–2(b) a provision for cessation or relocation of coal severance operations due to governmental order. We substitute the term ''cessation'' in the final rule for the proposed ''suspension'' to avoid any possible confusion with suspensions authorized under 43 CFR 3483.3.

One commenter objected to language in proposed § 3400.0–5(rr)(6)(iii) that would have allowed a non-disqualifying suspension ordered by governmental authorities for reasons beyond the control of the lessee/operator and *not the fault of the [lessee /operator]* (Emphasis added). The commenter asserted that the proposal would invite needless disputes over what was, or was not, the fault of the lessee/operator. BLM agrees and has deleted the reference to reasons beyond the reasonable control and not the fault of the operator/lessee from final § 3481.4–2(b).

Section 3481.4–3 Does a temporary interruption in coal severance affect the diligence requirements applicable to my lease or LMU? Final § 3481.4–3 specifies that an interruption in coal severance does not change the diligence requirements of 43 CFR subpart 3483 applicable to a lease or LMU. There was confusion among the commenters concerning the distinction between an interruption in coal severance under the proposed definition of ''producing'' and the lease suspension provisions located at 43 CFR 3483.3. BLM is including this section in the final rule to clarify that a qualifying interruption in coal severance, which maintains eligibility to receive future leases, does not affect the diligence requirements of a lease or LMU. Such interruptions do not constitute suspensions under 43 CFR 3483.3, which implements sections 7(b) and 39 of MLA (30 U.S.C. 207(b) and 209). A lessee who seeks such a suspension or extension of lease terms must apply to BLM for approval.

Section 3481.4–4 What is the aggregate amount of time I can temporarily interrupt coal severance and have BLM consider my lease or LMU producing? Based on commenter opposition to the proposed 3-month limit on temporary interruptions, BLM has modified the final rule to provide substantially more flexibility to operators, but without being completely open-ended, as was the previous rule. BLM believes that the approach selected in the final rule appropriately balances the legitimate operational needs of lessees with the goal of curbing abuse of the exception from the requirement to sever coal. Thus, final § 3481.4–4 adopts a provision that limits the aggregate of all interruptions in coal severance to 1 year in the 5-consecutive-year period immediately preceding the date of BLM's determination of lessee qualifications under 43 CFR 3472.1–2, except that BLM will not count any interruption that is 14 days or less in duration or any suspension approved by BLM pursuant to section 7(b) of MLA (30 U.S.C. 207(b)). In other words, if BLM were looking, on June 30, 1997, at the eligibility of a particular lease holder who is reliant upon the temporary interruption provision, we would look at the aggregate of interruptions between July 1, 1992, and June 30, 1997. If the aggregate of interruptions during that period exceeded 365 days, not counting interruptions of 14 days or less or approved section 7(b) suspensions, the lease holder would not be qualified to obtain additional leases. With each passing day, the 5-year period that BLM looks at rolls forward.

In the proposed rule, BLM stated that section 7(b) provides an exception from the diligent development requirements (59 FR 66876). However, the last sentence of section 7(b) makes it clear that the section 7(b) exceptions do not apply to the requirement to produce commercial quantities at the end of ten years in section 7(a). Thus the rule implementing the section 7(b) exceptions provides an opportunity to seek a suspension of the continuous operation requirement, but does not mention a suspension of the diligent development requirements. See 43 CFR § 3483.3(a). Therefore when the proposed rule preamble suggested that an operator/lessee could seek a force majeure exception under section 7(b) for temporary suspensions of greater than three months in accordance with 43 CFR § 3483.3, that statement was accurate under the previous regulations only for operations which have achieved diligent development and are in a continuous operation mode, and for circumstances which would qualify under section 7(b).

Although the section 7(b) exception from producing requirement in section 2(a)(2)(A) applies to leases which have not achieved diligent development, no existing regulatory provision implements the statutory provision. Thus, we are adopting in the final rule a conforming provision at § 3481.4–4(b)(3) to recognize that MLA, as amended, provides a force majeure exception to the section 2(a)(2)(A) producing requirement (30 U.S.C. 201(a)(2)(A)) for operations that are subject to diligent development. In circumstances that meet the force majeure exceptions described in section 7(b) of MLA, BLM will approve suspensions for operations subject to diligent development for the purpose of compliance with section 2(a)(2)(A).

Most of the commenters were concerned about the proposed 3-month limitation for temporary suspensions and the circumstances under which a temporary suspension could be authorized. To adequately address the volume and detail of the comments received, the comments applicable to these topics are discussed individually below.

Many comments took issue with the 3-month limit on the duration of a temporary suspension in proposed § 3400.0–5(rr)(6)(ii)(A). Most of these comments considered a 3-month period to be too brief. Several comments noted that the duration of most qualifying conditions could be longer than 3 months, for example, the time to repair a damaged steam turbine or the time needed to negotiate alternative sales agreements. Several comments said they thought the 3-month duration was arbitrary and would serve little useful purpose, suggesting instead to retain the former provision which did not limit the duration. Another comment stated that the word ''temporary'' speaks for itself, thereby eliminating the need for a specified duration. One comment was concerned about how frequently 3-month temporary suspensions could be granted and if such suspensions could be granted for consecutive 3-month periods. One comment suggested as an alternative that a temporary suspension could continue until the end of the next continued operation year.

BLM believes the duration of an interruption in coal severance must be explicitly limited to preclude abuse. BLM recognizes that in the normal course of business, a lessee/operator may be confronted with circumstances in which prudent business practice demands a cessation of coal production for an abbreviated period. It is in the best interest of both the lessee/operator and BLM to work together to ensure prudent resource management is maintained through periods when coal is not produced. However, BLM's experience has shown, as documented by the GAO report discussed above, that allowance of an interruption in coal severance for an unspecified duration will not necessarily achieve the intent of FCLAA. BLM believes that the duration of any interruption in coal severance must be limited to reduce opportunities for abuse and speculation.

The comment that suggested allowing extension of an interruption in coal severance until the end of the next continued operation year assumes that the lease or LMU is subject to continued operation. As discussed earlier in this preamble in connection with § 3472.1–2, the holder of a lease subject to continued operation will not be disqualified from obtaining additional leases if the lease is producing or in compliance with the continued operation requirements. Thus, a standard for temporary interruptions based on continued operation year would not be applicable to the type of situation identified in the GAO report, that is, where the holder of a non-producing lease subject to diligent development obtains additional leases. Extending the duration of an interruption in coal severance must also be considered in light of the explicit production requirements of section 2(a)(2)(A) of MLA and the goals of FCLAA to deter speculation. However, in response to the comments, BLM considers it reasonable to allow the aggregate length of temporary interruptions in coal severance to exceed 3 months. Thus, final § 3481.4–4 adopts a maximum aggregate for temporary interruptions in coal severance of not more than 1 year in the 5-consecutive-year period immediately preceding the date of BLM's determination of lessee qualifications under 43 CFR 3472.1–2.

One comment on the proposed rule expressed concern that the proposed rule did not explicitly establish if the proposed 3-month limit would be applied for each qualified event, or only once within the lease term, or if a lessee/operator could receive consecutive 3-month interruptions for an indefinite period. BLM agrees that the proposed rule inadequately defined when and how the 3-month limit would be applied. This concern is addressed in the final rule at § 3481.4–4(a) which provides that the lessee/operator may interrupt coal severance for up to 1 year, in aggregate, during the immediately preceding 5-consecutive-year period. BLM believes that allowing an aggregate of 1 year of interrupted coal severance in the immediately preceding 5-consecutive-year period will provide a needed balance between operating flexibility for the lessee/operator as well as enforcement of FCLAA's anti-speculative intent. A quantifiable standard for temporary interruptions in coal severance eliminates the need for an exhaustive listing of qualified events. BLM believes that simple and predictable criteria are the only way to provide consistent and uniform outcomes. The workload associated with tracking the aggregate days of interrupted coal severance is negligible when compared to the workload that would be associated with determining if each temporary interruption in coal severance is a qualified event or not. Additional discussion of qualified events is located under the portion of the preamble associated with final § 3481.4–2.

Final § 3481.4–4(b)(1) provides that BLM will not count any interruption in coal severance that is 14 days or less in duration. BLM added this provision to the final rule for the convenience of the regulated community and ease of administration. BLM is primarily concerned with interruptions that evince speculative intent, not in short-term stoppages of a few days duration. Also, it would be onerous for BLM and lessee/operators to track each time production ceased for a day or two. It would be difficult for BLM to maintain records of this information and to enforce this requirement. BLM believes not regulating interruptions of 14 days or less achieves a reasonable balance between discouraging speculation and avoiding an administrative burden. Also, BLM expects that this provision will allow lessee/operators to take into account vacations and holidays. The previous rule and the proposed rule both addressed vacations and holidays by including them in the list of circumstances allowing temporary suspension of production.

Final § 3481.4–4(b)(2) provides that BLM will not count any suspension granted under 43 CFR 3483.3 toward the aggregate of temporary interruptions in coal severance. The referenced provision is the one that implements the section 7(b) of MLA exception from continued operation for strikes, the elements, and casualties not attributable to the lessee. Final § 3481.4–4(b)(3) provides that BLM will not count toward the aggregate of temporary interruptions any BLM-approved suspension of the 43 CFR 3472.1–2(e)(1) requirement for reasons of strikes, the elements, or casualties not attributable to the lessee before diligent development is achieved. This provision implements the section 7(b) of MLA exception from diligent development. A suspension granted under this provision is for the limited purpose of implementing section 2(a)(2)(A) and does not affect the section 7(a) requirement to produce commercial quantities in 10 years. BLM added these provisions to the final rule in recognition of the fact that the so-called force majeure exceptions contained in section 7(b) are open ended and cannot be limited by BLM's regulatory provisions applicable to temporary interruptions in coal severance.

Subpart 3483—Diligence Requirements. *Section 3483.3 Suspension of continued operation or operations and production.* BLM's previous rules allowed extension of the deadline for submission of a resource recovery and protection plan (R2P2) beyond 3 years. In *Natural Resources Defense Council* v. *Jamison*, 815 F. Supp. 454 (D.D.C. 1992), the court held that the requirement to submit an R2P2 within 3 years is an unambiguous deadline that cannot be extended. Consequently, BLM proposed to eliminate this provision. BLM also

proposed some minor edits for clarity of expression. BLM is adopting the provisions as proposed.

Several comments supported removal of the provision for extending the time for submitting an R2P2 beyond 3 years. One comment suggested an editorial change in the last sentence of proposed § 3483.3(a). The comment suggested changing the word ''and'' to ''or'' so that the last sentence would read, ''The authorized officer, if he or she determines an application to be in the public interest, may approve the application *or* terminate suspensions that have been or may be granted.'' (Emphasis added.) This comment is adopted in the final rule.

Subpart 3487—Logical Mining Unit. *Section 3487.1 Logical mining units.* Paragraph (e) of this section contains the stipulations required for the approval of a proposed LMU. Paragraph (e)(6) is the stipulation that sets the beginning of the 40-year period in which the coal reserves of the LMU must be mined. This provision is derived from section 2(d)(2) of MLA, which provides in pertinent part that ''the reserves of the entire unit will be mined within *a period established by the Secretary* which shall not be more than forty years'' (30 U.S.C. 202a(2)). (Emphasis added.) Because MLA does not specify when the 40-year period starts, BLM has the discretion to establish a reasonable starting date(s). BLM's previous regulations provided that the 40-year period begins on the date that coal is first produced from the LMU, after LMU approval, as determined during the first royalty reporting period after such date. See 43 CFR 3487.1(e)(6) (1995). The proposed rule would have begun the 40-year period when the R2P2 for the LMU is approved. BLM explained that this change would encourage diligent development of Federal coal reserves because the lessee/operator is ''free to start'' mining operations after LMU approval (59 FR 66878, Dec. 28, 1994).

As discussed in the preamble of the proposed rule, the MLA states that the mine-out period that the Secretary establishes must be part of the approved ''mining plan'' and cannot exceed 40 years. See 30 U.S.C. 202a(2). BLM interprets ''mining plan'' to mean the ''operation and reclamation plan'' required under 30 U.S.C. 207(c), which the implementing regulations at 43 CFR Part 3482 call the resource recovery and protection plan, or ''R2P2.'' This plan, which the lessee must submit within 3 years after a lease or LMU is approved, provides a detailed description of how the lessee/operator will mine the coal and reclaim the land. Because this plan is customarily approved concurrently with, or subsequent to, the mining permit issued under the Surface Mining Control and Reclamation Act (SMCRA), the lessee/operator can proceed with development operations after the date of R2P2 and permit approval. See 30 CFR 746.13. Although MLA does not state expressly when the mine-out period should start, BLM believes that in situations where R2P2 approval for the LMU precedes coal production on the LMU, it best serves the purposes of MLA to begin the 40-year LMU mine-out period on the date of R2P2 approval to encourage diligent development of Federal coal reserves. Otherwise, in the absence of such a provision, the lessee/operator could delay the beginning of the 40-year LMU mine-out period.

BLM is adopting in the final rule a provision that sets the beginning of the 40-year period at the effective date of the LMU, if any portion of the LMU is then producing. If not, then the beginning date is either the date of approval of the R2P2 for the LMU or, if coal production begins before R2P2 approval, the date coal production begins after LMU approval. This approach takes into account the three coal-production scenarios that are possible at the time of LMU formation and effectively continues the previous rule in situations where coal production precedes approval of the R2P2. First, if coal production is occurring within the area covered by the LMU when the LMU is formed, it is reasonable to begin the 40-year mine-out period on the date of LMU approval. Second, if coal is not being produced anywhere within the LMU at the time it is approved, the 40-year mine-out period begins when the R2P2 for the LMU is approved. In the third scenario, it is possible that the LMU could begin to produce coal before the R2P2 for the LMU is approved. For example, production could occur from a lease in the LMU that has an approved lease-specific R2P2 or from non-Federal resources within the LMU under a separate SMCRA permit. The final rule takes into account this scenario by providing that the 40-year mine-out period begins on the date coal production begins after LMU approval. Final § 3487.1(e)(6) does not affect the beginning date of the 40-year mine-out period for LMUs approved before the effective date of this final rule.

Several comments said the 40-year mine-out provision for an LMU should be flexible to allow, upon reasonable justification, mine-out periods longer than 40 years. BLM does not agree. Amended section 2(d)(2) of MLA explicitly limits the period for mining all recoverable coal reserves in an LMU to not more than 40 years. See 30 U.S.C. 202a(2). BLM does not have the authority to change statutory provisions through notice and comment rulemaking.

Many comments opposed beginning the 40-year mine-out period for an LMU upon the approval date of the R2P2 for the LMU. Several comments asserted it is not correct to assume that a lessee is ''free to start'' mining operation after the R2P2 is approved just because the R2P2 is approved in connection with the SMCRA permit. Other commenters opposed the proposal because the R2P2 is a proposed action for the leasehold rather than being explicitly tied to the actual commencement of mining operations which could be several years later.

BLM does not agree with these comments. Under existing rules, which define the mining plan as the R2P2, approval of the mining plan by the Assistant Secretary constitutes approval under section 7(c) of MLA for a lessee to enter and disturb the leasehold (30 U.S.C. 207(c)). The SMCRA permit is an authorization to enter the permit area and commence mining operations (30 U.S.C. 1256). BLM recognizes that pre-production activities consume a certain amount of time. However, given the amount of time and effort needed to obtain a permit, its limited term, and the fact that it will self-terminate if no activity occurs within 3 years of issuance (30 CFR 773.19(e)), there are a number of incentives to expedite pre-production activities and begin production once a permit is issued. From BLM's perspective, the portion of the 40-year mine-out period that will elapse during the pre-production phase is small in relation to the total length of the 40-year period. BLM believes that this provision is fully in accord with the statutory requirement to encourage diligent development (30 U.S.C. 202a(2)).

Several other comments said that absent explicit evidence to the contrary, beginning the LMU recovery period based on the R2P2 approval date is contrary to the statutory requirement of FCLAA that an LMU must promote the efficient, economical, and orderly development of the resource. BLM does not agree. The law provides that, ''[an LMU] is an area of land in which the coal resources *can be developed* in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources.'' (Emphasis added.) See 30 U.S.C. 202(a)(1). The 1976 amendments to MLA (FCLAA) were intended to address the problem of Federal leases being held for speculative purposes

without any production occurring. BLM believes that starting the 40-year mine-out period upon R2P2 approval, which can occur several years after LMU approval, will spur efficient, economical, and orderly development without allowing undesirable speculation. Without such a provision, lessee/operators can continue to delay the beginning of production without penalty as long as the diligent development and section 2(a)(2)(A) requirements are satisfied. Beginning the 40-year period upon R2P2 approval will provide an appropriate incentive to commence production.

One comment expressed concern about a situation where an existing mining operation that has an approved lease-specific R2P2 is included in an LMU. The commenter inquired whether the 40-year mine-out period would begin when the lease-specific R2P2 was approved or when the LMU R2P2 was approved, even though the LMU R2P2 is not required to be submitted until up to 3 years after the LMU approval. Under the proposed rule, the 40-year mine-out period would have begun upon approval of the LMU R2P2. The R2P2 does not have to be submitted for 3 years and may not be approved for an additional time period. To extend the mine-out period by that amount of time for an LMU that is already producing would not contribute to the goal of encouraging diligent development. For the above reason and to ensure compliance with 30 U.S.C. 202a(2), the final rule provides that if any portion of the LMU is producing when the LMU is approved, the 40-year mine-out period begins on the effective date of the LMU.

The final rule also addresses the situation where a lease that is included in an LMU and has an approved lease-specific R2P2 begins production after LMU approval, but prior to LMU R2P2 approval. In this case, the final rule provides that the 40-year mine-out period begins on the date coal is first produced from an approved LMU in advance of LMU R2P2 approval.

Several comments expressed concern that the proposed rule did not address whether the change in the beginning date for the LMU 40-year mine-out period would be applied to LMUs that have already been approved. In the December 28, 1994, proposed rule (59 FR 66878), BLM indicated that the proposed rule would apply to all LMU applications that were under review on December 28, 1994, and all LMU applications received after December 28, 1994. However, since the final rule BLM is adopting today differs from the proposal, BLM has decided that the rules adopted today should apply prospectively. That is, any decisions on pending LMU applications that BLM makes after the effective date of these rules will be based on the rules adopted today regardless of when the LMU application was submitted. Any decisions BLM has made or makes prior to the effective date of the rules adopted today will be based on the rules in effect on the date the decision is made. Thus, this final rule does not affect the beginning date of the 40-year mine-out period for LMUs approved before the effective date of this rule.

Several comments asserted that changing the beginning date of the LMU 40-year mine-out period unduly constrains and restricts the flexibility of the LMU lessee/operator. BLM does not agree with this characterization of the rule. Section 2(d)(2) of MLA, as amended, requires the Secretary to establish the 40-year mine-out period (30 U.S.C. 202a(2)). This final rule establishes the beginning of the 40-year period and provides a degree of flexibility by accounting for the various scenarios under which coal production may occur in an LMU. This provision is in contrast to the former regulation which tied the beginning to initiation of coal production, essentially allowing the lessee/operator total control over setting the beginning point.

Section 3487.1(f) Criteria for approving the establishment of an LMU. BLM's previous regulations provided that, ''The authorized officer shall, except for good cause stated in a decision disapproving the application, approve an LMU if it meets the following criteria * * *.'' See 43 CFR 3487.1(f) (1995). The proposed rule would have changed the obligatory ''shall'' to the permissive ''may'' while retaining the requirement for putting the decision on the LMU application in writing. See proposed § 3487.1 (f) and (g). As discussed below, BLM is adopting the word ''may'' and the requirement for a written decision in final §§ 3487.1 (f) and (g) respectively.

There were many comments that opposed changing the criteria for approving an LMU from ''The authorized officer shall, except for good cause stated in a decision disapproving the application, approve * * *'' in the previous rule to ''The authorized officer may approve * * *.'' The comments generally perceived the change as allowing the authorized officer (BLM) or special interest groups the opportunity to delay approval of an LMU for any reason. One comment said that an entity that is willing and able to absorb the significant expense necessary to initiate a coal mining operation to develop Federal coal resources should be granted the presumption that BLM would approve an LMU application unless good cause is documented for not approving the application. Several commenters were concerned that the rule would be prone to abuse in that an LMU could be denied for any arbitrary reason however unjustified. One comment concluded that the MLA does not support this rule, and the applicant should not bear the burden of showing that a proposed LMU complies with the statutory requirements. One comment said, ''the focus of approval determinations has always been upon the ability of the applicant to meet the criteria specified within the regulations, and this has constituted demonstration of the lack of a good cause to disapprove the application.''

BLM believes that the final rule is fully consistent with the statute. Section 2(d) of FCLAA (30 U.S.C. 202a(1)) states that, ''The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, *may* approve the consolidation of coal leases into a logical mining unit.'' (Emphasis added.) Use of the word ''may'' gives the Secretary broad discretion to determine whether the public interest would be served by approval of an LMU. The legislative history of FCLAA shows no Congressional intent to create a presumption in favor of approving an LMU. See 122 Cong. Rec. 507–8 (Jan. 21, 1976). Thus, MLA does not require that the Secretary approve an LMU.

BLM believes that the concern about abuse of the rule is misplaced. Final § 3487.1(f)(2) sets forth factors that BLM will consider in determining whether a proposed LMU meets the statutory requirements. Any potential for abuse is checked by the requirement in final § 3487.1(g) for BLM to make a written statement of the reasons for its decision concerning an LMU application. As with any BLM decision, it cannot be arbitrary. In addition, aggrieved persons may seek administrative review from the Interior Board of Land Appeals. Thus, the rule provides an appropriate balancing of BLM's and an applicant's interests. The applicant's responsibility to provide sufficient justification that the LMU application conforms to the requirements of MLA and applicable regulation is balanced by BLM's obligation to state and explain, in writing, the reasons for the decision on the LMU application.

Section 3487.1(f)(2). BLM's previous rules provided that an LMU would be approved if mining operations on the LMU will achieve maximum economic recovery of Federal recoverable coal reserves within the LMU. See 43 CFR

3487.1(f)(2) (1995). Paragraph (f)(2) also provided that a single operation may include a series of excavations. Proposed § 3487.1(f)(2) (i)–(vii) would have listed seven specific factors BLM would consider in determining if an LMU application meets the statutory requirements: (1) the amount of coal reserves recoverable from the LMU, compared with the amount recoverable if each lease were developed individually; (2) the mining sequence; (3) the potential for independent development of each lease proposed to be included in the LMU; (4) the advantages of developing and operating the LMU as a unit; (5) the potential for inclusion of the leases in question into another LMU; (6) the availability of transportation and access facilities; and (7) other factors that the authorized officer finds relevant to achievement of maximum economic recovery in an efficient, economical, and orderly manner.

In the final rule, we are adopting the seven criteria, with minor editorial changes, in a slightly revised form that indicates the relationship of the criteria to the statutory requirements. Thus, the final rule provides that in determining whether the proposed LMU will meet the requirement to achieve maximum economic recovery of Federal coal reserves, BLM, as appropriate, will consider the amount of coal reserves recoverable from the proposed LMU compared to the amount recoverable if each lease were developed individually and any other factors BLM finds relevant to this requirement.

In determining whether the proposed LMU meets the requirement to facilitate development of coal reserves in an efficient, economical, and orderly manner, BLM, as appropriate, will consider the potential for independent development of each lease proposed to be included in the LMU, the potential for inclusion of the leases in question in another LMU, the availability and utilization of transportation and access facilities for development of the LMU as a whole compared to development of each lease separately, the mining sequence for the LMU as a whole compared to development of each lease separately, and any other factors BLM finds relevant to this requirement.

Finally, in determining whether the proposed LMU meets the requirement to provide due regard to conservation of coal reserves and other resources, BLM, as appropriate, will consider the effects of developing and operating the LMU as a unit and any other factors BLM finds relevant to this requirement. BLM believes that by explicitly linking the factors we will consider with the statutory requirements each LMU must meet, the regulated community will have a better understanding of what an LMU application must demonstrate.

One of the factors that BLM will consider in determining whether a proposed LMU meets the requirement to provide due regard to conservation of coal reserves and other resources is the *effects* of developing and operating the LMU as a unit. See final § 3487.1(f)(2)(iii)(A). This language is a change from proposed § 3487.1(f)(2)(iv), which would have given consideration to the *advantages* of developing and operating the LMU as a unit. (Emphasis added.) BLM made this change due to a concern that considering only the advantages of developing and operating the LMU as a unit would unduly, and perhaps unwisely, narrow the scope of review of the LMU application. BLM believes that it is appropriate to consider both the advantages and disadvantages of developing and operating the LMU as a unit, as well as any associated impacts.

One commenter supported establishment of specific criteria for approval of an LMU application, but was concerned that the proposed LMU application approval criteria were confined to geologic and engineering considerations. The commenter favored criteria that would relate to the statutory requirement that the LMU should provide ''due regard to the conservation of coal reserves and other resources,'' particularly water resources. BLM does not necessarily agree that the proposed criteria were confined to geologic and engineering considerations. However, final § 3487.1(f)(2)(iii) clarifies BLM's position that we will consider the conservation of coal reserves and other resources. In addition, the substitution of ''effects'' for ''advantages'' in final § 3487.1(f)(2)(iii)(A), as discussed above, addresses the commenter's concern. Further, in response to this comment, the final rule organizes the factors BLM will consider before approving a proposed LMU according to the statutory criteria the LMU must meet.

Some comments asserted that the LMU approval criteria should be confined to the statutory criteria. Several comments were concerned that the proposed criteria do not appear to be related to, nor serve implementation of, the statutory criteria. One comment said BLM failed to adequately explain how the proposed approval criteria related to the statutory criteria. In response to these comments, BLM changed the organization of the final rule to indicate the relationship between the statutory criteria and the factors used in determining that proposed LMUs will meet them. The final rule groups the factors according to the applicable statutory criteria. BLM has not changed the statutory criteria that each LMU must meet. We have merely identified factors that we will use in determining whether LMU applications meet the criteria. For example, in determining whether a proposed LMU will facilitate efficient, economical, and orderly development of the coal reserves, it is entirely appropriate to consider the potential for independent development of each lease proposed for inclusion in the LMU. If a lease is not likely to be mined unless included in the proposed LMU, that is, the lease will be bypassed, then it would make sense in this case to include it in the proposed LMU.

Several commenters took issue with the proposed additional criteria for approval of an LMU application. One commenter said BLM lacked good cause to change the LMU application criteria. Other comments said the proposed criteria were unwarranted and of little use for approval of an LMU application. As discussed earlier in this preamble, BLM believes that there is a need to establish guidance for approving the establishment of LMUs. This is one of the specific recommendations of the GAO report. The seven factors provide guidance to the regulated community for preparing LMU applications and to BLM officials for analyzing them. This guidance will help to ensure that LMUs are only approved after demonstrating they will meet the statutory criteria and will help to ensure that LMUs are not formed merely for the purpose of allowing the leaseholder to continue to hold the lease without any coal production, an outcome that conflicts with the anti-speculative intent of FCLAA.

Section 3487.1(f)(6). Under the proposed rule, BLM would have added a new provision to limit the circumstances under which a lease that is nearing the end of its diligent development period may be included in an LMU. Proposed § 3487.1(f)(7) would have required that a Federal coal lease that has not met its diligent development requirement prior to the end of the eighth lease year can only be included in an LMU if either a portion of the LMU is included in a SMCRA permit or a portion of the LMU is included in an administratively complete SMCRA application. This provision corresponds to final § 3487.1(f)(6), which differs from the proposal only by clarifying that a portion of the LMU must be included in a SMCRA permit or administratively complete permit application at the time the LMU application is submitted.

Although several comments indicated support for the 8-year requirement as proposed, BLM received many comments opposed to the proposed rule. Most of the comments said the rule effectively reduced the diligence period for a lease from 10 years to 8 years. Several comments said the proposed rule would reduce the incentive to develop new mines on Federal lands. Some comments said BLM had not offered sufficient justification for this rule.

BLM does not agree with these opposing comments. The final rule does not set an absolute barrier to inclusion in an LMU for leases where 8 years of the diligent development period have elapsed. Leases in the ninth and tenth years of their diligent development periods are still eligible for inclusion in an LMU if a portion of the area to be covered by the LMU is included in a SMCRA permit or administratively complete permit application. As explained in the proposed rule preamble, under the current regulations, an LMU's 10-year diligent development period starts on the effective date of either the LMU or the most recent Federal lease, depending on the age and status of the leases to be included in the LMU. This provision gives a lessee/operator holding an older lease that is about to be terminated for failure to produce in commercial quantities an opportunity to postpone the lease termination date by applying for an LMU that combines the older lease with a more recently issued one. This situation occurred in the Rocky Butte case described in the GAO report. In this way, FCLAA's goal of preventing speculation in Federal coal reserves can be frustrated. A lease proposed to be included in an LMU that is nearing the end of its diligent development period without having produced in commercial quantities is likely to have been included in an LMU application merely for the purpose of delaying the leases's termination, and not for achieving efficient, economical, and orderly development of coal, and thus does not satisfy one of the statutory criteria for approval of an LMU.

To address this opportunity for frustration and circumvention of FCLAA's goals, BLM is adopting at final § 3487.1(f)(6) the provision limiting eligibility for inclusion in an LMU as proposed, with minor editorial changes, including a change that clarifies that the SMCRA permit must be in place or SMCRA permit application must have been submitted at the time the lessee submits the LMU application. BLM believes that the requirement to have a SMCRA permit or have applied for one is a significant indication that the LMU applicant is pursuing coal development in good faith.

One comment said this rule would impose an additional restriction on leases that are proposed to be included in a LMU in that the lease must demonstrate production in commercial quantities by the eighth diligent development year to qualify for inclusion in an LMU. BLM does not agree. The final rule does not affect the diligent development period of a Federal coal lease, which remains 10 years. The rule requires a lessee to demonstrate minimal progress toward development of the lease within the statutorily required diligence period as a condition for inclusion in an LMU after the eighth year of the lease. Significant flexibility remains for the lessee/operator in that only a portion of the LMU needs to be covered by an administratively complete SMCRA permit application or approved SMCRA permit. All leases proposed to be included in an LMU need not meet this requirement, but at least a portion of the area proposed to be included in the LMU must meet the requirement to obtain BLM's approval for the LMU. BLM believes this rule implements the anti-speculative intent of FCLAA and comports with the language of section 2(d) of MLA, as amended (30 U.S.C. 202a), which, as discussed above, affords BLM discretion in deciding whether to approve an LMU. This exercise of discretion is being codified in regulations to ensure consistent application and to inform the public of BLM policy. BLM has exercised its discretion and chosen to exclude from LMU those leases where there has not been sufficient progress to suggest a good-faith intention to timely achieve diligence. The benefits provided by formation of an LMU (for example, sheltering a lease from lease-specific diligence requirements) should only be approved upon demonstrating that the lessee is prudently working toward developing commercial quantities of coal. The rule only limits a lease's eligibility to be included in an LMU based on activity within the LMU boundary and does not affect lease-specific requirements.

One comment suggested an alternative to the proposed requirement that a portion of the LMU be covered by an approved SMCRA permit or an administratively complete SMCRA permit application. The commenter suggested that some portion of the LMU be covered by a SMCRA permit application submitted prior to expiration of the diligent development period. BLM did not accept this comment because we believe that adoption of this suggestion could create an unmanageable situation. An LMU must be approved prior to the expiration of the diligent development period because a lease will be terminated at the end of the period if it has not produced commercial quantities. Thus, a situation could be created where BLM would be faced with a decision to approve an LMU based on the expectation that a SMCRA permit application will be submitted, determined administratively complete, and approved by the regulatory authority some time in the future, but before the expiration of the diligent development period. If all these things did not occur, BLM might be faced with retroactively invalidating the LMU.

We also note that submittal of an administratively complete permit application for a portion of the LMU under consideration is not excessively burdensome. The SMCRA regulations at 30 CFR 701.5 limit the amount of information for an administratively complete application to that information necessary to initiate processing and public review. This standard is distinct from the higher standard for permit approval, which must be based on a ''complete and accurate'' application. See 30 CFR 773.15(c)(1).

Section 3487.1(g). As discussed above in the preamble to § 3487.1(f), BLM is adopting a provision that the authorized officer will state in writing the reasons for the decision on an LMU application.

One commenter suggested adding at the end of the sentence after the word ''application,'' the following clause: ''including how the decision meets regulatory criteria.'' BLM did not accept this comment and is adopting the provision as proposed. Stating the reasons for a decision is contingent upon establishing the relationship between the facts of an LMU application and the statutory and regulatory criteria. BLM believes such a requirement is implicit in the rule as written.

Section 3487.1(h)(4). Proposed § 3480.0–5(a)(21) would have included a definition for ''logical mining unit recoverable coal reserves exhaustion period.'' In the proposed rule preamble, BLM stated that the term would better reflect the requirement in MLA that the maximum mine-out period allowed for each LMU is 40 years (59 FR 66878). However, BLM is not adopting this definition in the final rule. We believe that the phrase ''40-year period in which the reserves of the entire LMU must be mined'' is clearer and more descriptive. It is self-explanatory and eliminates the need for a separate definition. Moreover, it is the same

phrase used in FCLAA. See 30 U.S.C. 202a(2). Therefore, the final rule for this section has been modified to substitute the term ''40-year period in which the reserves of the entire LMU must be mined'' for the term ''logical mining unit recoverable coal reserves exhaustion period.'' The cross reference to § 3487.1(e)(6), which was proposed to be eliminated, is retained in the final rule.

III. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the final rule does not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record. BLM invites the public to review these documents by contacting the individual identified under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM anticipates that this final rule will have no significant impact on small entities. Historically, due to the substantial capital investment requirements for lease acquisition and mine development, LMUs have not been within the purview of small entities. The size standard established by the Small Business Administration for small entities engaged in coal mining, including surface, underground, and anthracite operations, is 500 employees (61 FR 3280, Jan. 31, 1996). However, BLM currently has one pending LMU application from a small entity. Analysis of this LMU application indicates that the final rule will have no effect on the outcome of the review process for this proposed LMU. Therefore, BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

BLM has determined that this final rule will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

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

Executive Order 12630 (Takings)

As discussed in the foregoing preamble, the final rule does not represent a government action that is likely to interfere significantly with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866 (Regulatory Planning and Review)

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988 (Civil Justice Reform)

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Authors

The authors of this rule are William Radden-Lesage and Patrick W. Boyd, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: 202–452–0350 or 5030, respectively (Commercial or FTS).

List of Subjects

43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public land-mineral resources.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3480

Government contracts, Intergovernmental relations, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: August 12, 1997.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set forth in the preamble, BLM is amending 43 CFR parts 3400, 3470, and 3480 as set forth below:

PART 3400—COAL MANAGEMENT: GENERAL

1. Revise the authority citation for part 3400 to read as follows:

Authority: 30 U.S.C. 189, 359, 1211, 1251, 1266, and 1273; and 43 U.S.C. 1461, 1733, and 1740.

2. Amend § 3400.0–5 by revising the introductory text and paragraph (rr)(6) to read as follows:

§ 3400.0–5 Definitions.

As used in this group:

* * * * *

(rr) * * *

(6) *Producing* means actually severing coal. A lease is also considered producing when:

(i) The operator/lessee is processing or loading severed coal, or transporting it from the point of severance to the point of sale; or

(ii) Coal severance is temporarily interrupted in accordance with §§ 3481.4–1 through 4–4 of this chapter.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

3. Revise the authority citation for part 3470 to read as follows:

Authority: 30 U.S.C. 189 and 359 and 43 U.S.C. 1733 and 1740.

Subpart 3472—Lease Qualification Requirements

4. Amend § 3472.1–2(e) by revising paragraphs (e)(1)(i), (e)(6)(ii)(D), and (e)(6)(ii)(E) to read as follows:

§ 3472.1–2 Special leasing qualifications.

* * * * *

(e)(1)(i) On or after December 31, 1986, no lease shall be issued and no existing lease shall be transferred to any entity that holds and has held for 10 years any lease from which the entity is not producing coal in commercial quantities, except as authorized under the advance royalty or suspension provisions of part 3480 of this chapter, or paragraph (e) (4), (5), or (6) of this section.

* * * * *

(6)(i) * * *

(ii) * * *

(D) Producing, or currently in compliance with the continued operation requirements of part 3480 of this chapter, for leases that began their first production of coal—

(*1*) On or after August 4, 1976; and

(*2*) After becoming subject to the diligence provisions of part 3480 of this chapter;

(E) Contained in an approved logical mining unit that is:

(*1*) Producing or currently in compliance with the LMU continued operation requirements of part 3480 of this chapter; and

(*2*) In compliance with the logical mining unit stipulations of approval under § 3487.1(e) and (f) of this chapter; or

* * * * *

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

5. Revise the authority citation for part 3480 to read as follows:

Authority: 30 U.S.C. 189, 359, 1211, 1251, 1266, and 1273; and 43 U.S.C. 1461, 1733, and 1740.

Subpart 3481—General Provisions

6. Amend subpart 3481 by adding new §§ 3481.4 through 3481.4–4 to read as follows:

§ 3481.4 Temporary interruption in coal severance.

§ 3481.4–1 Can I temporarily interrupt coal severance and still be qualified as producing?

Yes, a temporary interruption in coal severance allows you (the lessee/operator) to halt the extraction of coal for a limited period of time without jeopardizing your qualifications under section (2)(a)(2)(A) of MLA to receive additional leases. During the period of a temporary interruption in coal severance, BLM still considers your lease or LMU to be producing so as not to preclude you from receiving a new or transferred lease.

§ 3481.4–2 What are some examples of circumstances that qualify for a temporary interruption of coal severance?

(a) Movement, failure, or repair of major equipment, such as draglines or longwalls; overburden removal; adverse weather; employee absences;

(b) Inability to sever coal due to orders issued by governmental authorities for cessation or relocation of the coal severance operations; and

(c) Inability to sell or distribute coal severed from the lease or LMU out of or away from the lease or LMU.

§ 3481.4–3 Does a temporary interruption in coal severance affect the diligence requirements applicable to my lease or LMU?

No, a temporary interruption in coal severance covered by §§ 3481.4–1 to 3481.4–4 does not change the diligence requirements of subpart 3483 applicable to your lease or LMU.

§ 3481.4–4 What is the aggregate amount of time I can temporarily interrupt coal severance and have BLM consider my lease or LMU producing?

(a) If you (the lessee/operator) want BLM to consider your lease or LMU to be producing, the aggregate of all temporary interruptions in coal severance from your lease or LMU must not exceed 1 year in the 5-consecutive-year period immediately preceding the date of BLM's determination of lessee qualifications under § 3472.1–2 of this chapter.

(b) BLM will not count toward the aggregate interruption limit described in paragraph (a) of this section:

(1) Any interruption in coal severance that is 14 days or less in duration;

(2) Any suspension granted under § 3483.3 of this part; and

(3) Any BLM-approved suspension of the requirements of § 3472.1–2(e)(1) of this part for reasons of strikes, the elements, or casualties not attributable to the operator/lessee before diligent development is achieved.

Subpart 3483—Diligence Requirements

7. Amend § 3483.3 by revising the heading and paragraphs (a) introductory text and (a)(1) to read as follows:

§ 3483.3 Suspension of continued operation or operations and production.

(a) Applications for suspensions of continued operation must be filed in triplicate in the office of the authorized officer. The authorized officer, if he or she determines an application to be in the public interest, may approve the application or terminate suspensions that have been or may be granted.

(1) The authorized officer must suspend the requirement for continued operation by the period of time he or she determines that strikes, the elements, or casualties not attributable to the operator/lessee have interrupted operations under the Federal coal lease or LMU.

* * * * *

Subpart 3487—Logical Mining Unit

8. Amend § 3487.1 by revising paragraphs (e)(6), (f) introductory text, and (f)(2); redesignating existing paragraphs (g) and (h) as (h) and (i), respectively; adding new paragraphs (f)(6) and (g); and revising newly redesignated paragraph (h)(4) to read as follows:

§ 3487.1 Logical mining units.

* * * * *

(e) * * *

(6) Beginning the 40-year period in which the reserves of the entire LMU must be mined, on one of the following dates—

(i) The effective date of the LMU, if any portion of the LMU is producing on that date;

(ii) The date of approval of the resource recovery and protection plan for the LMU if no portion of the LMU is producing on the effective date of the LMU; or

(iii) The date coal is first produced from any portion of the LMU, if the LMU begins production after the effective date of the LMU but prior to approval of the resource recovery and protection plan for the LMU.

* * * * *

(f) The authorized officer may approve an LMU if it meets the following criteria:

(1) * * *

(2) The LMU application demonstrates that mining operations on the LMU, which may consist of a series of excavations, will:

(i) Achieve maximum economic recovery of Federal recoverable coal reserves within the LMU. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(A) The amount of coal reserves recoverable from the proposed LMU compared to the amount recoverable if each lease were developed individually; and

(B) Any other factors BLM finds relevant to this requirement;

(ii) Facilitate development of the coal reserves in an efficient, economical, and orderly manner. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(A) The potential for independent development of each lease proposed to be included in the LMU;

(B) The potential for inclusion of the leases in question in another LMU;

(C) The availability and utilization of transportation and access facilities for development of the LMU as a whole compared to development of each lease separately;

(D) The mining sequence for the LMU as a whole compared to development of each lease separately; and

(E) Any other factors BLM finds relevant to this requirement; and

(iii) Provide due regard to conservation of coal reserves and other resources. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(A) The effects of developing and operating the LMU as a unit; and

(B) Any other factors BLM finds relevant to this requirement.

* * * * *

(6) A lease that has not produced commercial quantities of coal during the first 8 years of its diligent development period can be included in an LMU only if at the time the LMU application is submitted:

(i) A portion of the LMU under consideration is included in a SMCRA permit approved under 30 U.S.C. 1256; or,

(ii) A portion of the LMU under consideration is included in an administratively complete application for a SMCRA permit.

(g) The authorized officer will state in writing the reasons for the decision on an LMU application.

(h) * * *

(4) The authorized officer will not extend the 40-year period in which the reserves of the entire LMU must be mined, as specified at paragraph (e)(6) of this section, because of the enlargement of an LMU or because of the modification of a resource recovery and protection plan.

* * * * *

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Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, and 175

Prohibition of Oxidizers Aboard Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 175

[Docket No. HM–224A; Notice No. 97–8]

RIN 2137–AC92

Prohibition of Oxidizers Aboard Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On December 30, 1996, RSPA proposed to amend the Hazardous Material Regulations to prohibit the carriage of oxidizers, including compressed oxygen, aboard all passenger-carrying aircraft. The effect of this prohibition would be to limit oxidizers to accessible locations on cargo aircraft. The December 30, 1996 notice of proposed rulemaking analyzed Class D cargo compartments and indicated that a supplemental notice would be published to analyze Class B and C compartments. This supplemental notice specifically analyzes the prohibition of oxidizers in other than Class D cargo compartments. The proposed requirements would apply to foreign and domestic aircraft entering, leaving, or operating within the United States. The purpose of these proposals is to enhance air transportation safety.

DATES: Comments must be received by October 20, 1997.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, room 8421, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in the Department of Transportation headquarters building (Nassif Building) at the above address on the eighth floor. Public dockets may be reviewed there between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001; or Gary Davis, Office of Flight Standards, (202) 267–8166, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington DC 20591.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1996, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 68955) proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to prohibit the carriage of oxidizers, including compressed oxygen, in passenger-carrying aircraft. This proposal also would have the effect of limiting packages of oxidizers that are allowed on cargo aircraft to locations accessible to crew members (see § 175.85(b)). In the December 30, 1996 NPRM, RSPA analyzed the prohibition of oxidizers in Class D cargo compartments only, and it proposed a new § 175.85(d) to prohibit loading or transporting in a Class D compartment any package containing a hazardous material for which an Oxidizer or Oxygen label is required. RSPA also stated that it planned to issue a supplemental NPRM further analyzing the prohibition of oxidizers aboard passenger-carrying aircraft in Class B and C cargo compartments. This is the supplemental NPRM to which RSPA referred. If the proposal to completely prohibit the transportation of oxidizers on passenger-carrying aircraft and limit their transportation on cargo aircraft to accessible locations is adopted, by adding the word ''Forbidden'' in Column 9A of the Hazardous Materials Table in § 172.101 for those materials for which an Oxidizer or Oxygen label is required, RSPA would not adopt the proposed § 175.85(d), which would prohibit the carriage of these materials in Class D compartments only.

The December 30, 1996 NPRM also proposed several amendments to provisions in the HMR concerning chemical oxygen generators. These proposed amendments were discussed in Part VII of the preamble to the December 30, 1996 NPRM and, in summary, would: (1) Add a shipping description for ''Oxygen generator, chemical,'' consistent with the recent adoption of this shipping description by the International Civil Aviation Organization (ICAO); (2) indicate in §§ 172.101 (the Hazardous Materials Table) and 171.11 that chemical oxygen generators may not be transported aboard passenger-carrying aircraft or in inaccessible cargo compartments in cargo aircraft; (3) indicate in §§ 171.11, 171.12, and 171.12a that there are no exceptions from HMR requirements for classification, approval and description of oxygen generators when shipping to, from or within the U.S. under the provisions of international or Canadian regulations; (4) specify packaging requirements for shipment of chemical oxygen generators; and, (5) eliminate an exception in § 175.10(a)(24) pertaining to personal chemical oxygen generators carried by passengers in checked baggage.

RSPA received requests from two airline industry associations to withdraw the proposed rule and not issue the supplemental NPRM. These requests are denied. RSPA also received several requests to extend the comment period on the December 30, 1996 NPRM for either 60 or 90 days. These requests were not granted. However, RSPA has accepted all late-filed comments to the NPRM and, by issuing this supplemental NPRM, RSPA is effectively extending until October 20, 1997 the period for comments on the proposal in the December 30, 1996 NPRM to prohibit the transportation of oxidizers, including compressed oxygen, on board passenger-carrying aircraft. RSPA is denying the requests for an extension of time to comment on the proposals in the December 30, 1996 NPRM pertaining to chemical oxygen generators, other than for the proposed removal of § 175.10(a)(24). Sufficient time has been provided to comment on the generator-related proposals, and RSPA issued a final rule on these proposals which was published in the **Federal Register** (62 FR 30767) on June 5, 1997. Also, RSPA issued an extension of effective date and corrections to the June 5, 1997 final rule on June 27, 1997 (62 FR 34667).

On May 31, 1996, the National Transportation Safety Board (NTSB) issued two recommendations to RSPA, the following of which is pertinent to this discussion:

> In cooperation with the Federal Aviation Administration, prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems. (Class I, Urgent Action) (A–96–30)

This NPRM was developed by RSPA in cooperation with the FAA. The actions proposed herein go beyond the NTSB recommendation and are based on a preliminary assessment by RSPA and the FAA of the hazards posed by oxidizers aboard aircraft. In its recommendation, NTSB cited three previous incidents in which oxidizers caused fires aboard aircraft. In each of these incidents, there were apparent or known serious violations of the HMR.

Although RSPA and FAA are not aware of any fire aboard an aircraft having been caused directly by transport of oxidizers in conformance with the HMR, RSPA and FAA agree that oxidizers may pose an unacceptable risk when transported aboard passenger-carrying aircraft and when transported aboard cargo aircraft in locations inaccessible to crew members.

Both the NTSB's recommendation and this proposed rule address risks that do not depend on or involve any violation of requirements currently in the HMR regarding the transportation of oxidizers. For that reason, RSPA and FAA disagree with opinions that better enforcement of the HMR would be sufficient to eliminate the risks present in transporting oxidizers on board passenger-carrying aircraft.

II. Oxidizers Under the HMR

Under the HMR, an oxidizer (Division 5.1) is a material that may, generally by yielding oxygen, cause or enhance the combustion of other materials (see 49 CFR 173.127). Hydrogen peroxide, swimming pool chlorine, bleach and oxygen are examples of commonly used oxidizers. Liquid and solid materials in Division 5.1 are subdivided into Packing Groups I, II, or III, a relative ranking corresponding to high, moderate or low risks posed by the material. Packing groups are assigned to specifically named materials in the § 172.101 Hazardous Materials Table (Table). For generic entries, such as ''Oxidizing solid, n.o.s.'' (''n.o.s.'' means ''not otherwise specified''), packing groups are assigned on the basis of test results. Certain gases (Class 2), most notably oxygen, are also oxidizers under the HMR and, even though they are not classed as such, they are required to be identified with the OXIDIZER or OXYGEN label.

III. Oxidizers Aboard Aircraft

Liquid oxidizers in Packing Group I are very reactive and have the ability to initiate and substantially intensify fires. These materials currently are forbidden for transportation by passenger-carrying aircraft. Some are also forbidden for transportation by cargo aircraft, and others are permitted only in restricted quantities aboard cargo-only aircraft when loaded in a manner which renders them accessible to a crew member during flight. Liquid or solid oxidizers that will initiate a fire are not permitted on passenger-carrying aircraft. However, gaseous oxygen is permitted on passenger-carrying aircraft; combustible materials can be readily ignited, by impact, high temperature, or flame, if exposed to gaseous oxygen.

In the absence of a fire caused by another source, oxidizers currently authorized for air transportation and offered in conformance with the HMR present minimal risks to aircraft, crew and passengers. Most oxidizers will not initiate fires when spilled or released, but they will intensify fires originating from other sources. The potential hazard posed by these oxidizers in an aircraft cargo compartment is that, if a fire were to occur elsewhere in the compartment, the fire may involve the oxidizer, and most oxidizers would then provide an oxygen-enriched environment which could intensify the fire and override the safety features of the compartment.

When transported by aircraft, an oxidizer is subject to per package quantity limits specified in the Hazardous Materials Table, and to aircraft quantity limits specified in § 175.75. For oxidizers forbidden aboard a passenger-carrying aircraft but permitted aboard a cargo aircraft, packages must be labeled (see § 172.101(j)(4)) with the Cargo Aircraft Only label specified in § 172.448 and, under the provisions of § 175.85(b), must be loaded in a manner so that they are accessible to a crew member during flight.

IV. Prohibition of Oxidizers on Passenger-carrying Aircraft and in Inaccessible Locations on Cargo Aircraft

In the December 30, 1996 NPRM, RSPA proposed to prohibit the loading or transportation aboard a passenger-carrying aircraft of any package for which an Oxidizer or Oxygen label (see §§ 172.405 and 172.426) is required under subpart E of part 172. Consistent with that proposal, in this supplemental NPRM, RSPA proposes to revise Column 9A of the Hazardous Materials Table, pertaining to quantity limitations on passenger aircraft, to read ''Forbidden'' for every shipping description that requires an Oxidizer or an Oxygen label. For oxidizers currently authorized for transportation aboard both passenger-carrying aircraft and cargo aircraft, the effect of this action would be that packages now would be labeled (see § 172.101(j)(4)) with the Cargo Aircraft Only label specified in § 172.448 and would be subject to the provisions of § 175.85(b). Paragraph (b) of § 175.85 restricts hazardous materials that are forbidden aboard passenger-carrying aircraft, but authorized aboard cargo aircraft, to locations where ''a crew member or other authorized person can see, handle, and where size and weight permit, separate such packages from other cargo during flight.'' This means that oxidizers also will be forbidden to be transported on a cargo aircraft in an inaccessible cargo compartment (e.g., a Class C or D cargo compartment) or in an accessible cargo compartment in a manner which renders the oxidizer inaccessible.

There are certain hazardous materials which may be listed in the Hazardous Materials Table as ''Forbidden'' on passenger-carrying aircraft but which may be permitted on passenger-carrying aircraft under the provisions of exceptions elsewhere in the HMR, such as for compressed oxygen as proposed in this notice. RSPA is proposing a minor change to § 175.85(b) to clarify that any package bearing a Cargo Aircraft Only label must be stowed accessibly on cargo aircraft, even though there may be specific exceptions elsewhere in the regulations which allow the material on passenger-carrying aircraft under certain conditions.

The December 30, 1996 NPRM discussed the classification of cargo compartments into five categories, Classes A, B, C, D, and E (see 14 CFR 25.857), as defined for transport category aircraft in FAA's Federal Aviation Regulations (FAR). Although these categories are also referenced in the following paragraphs and elsewhere in this preamble, it should be noted that the proposals in this supplemental NPRM address all aircraft without regard to whether they are transport category aircraft or not. Thus, this proposal would prohibit oxidizers in cargo compartments of all transport category and nontransport category aircraft used in passenger-carrying service.

Class B Compartments on Passenger-Carrying Aircraft

A Class B compartment is one: (1) To which any part of the compartment is accessible in flight to a crew member with a hand held fire extinguisher; (2) from which no hazardous quantities of smoke, flames, or extinguishing agent will enter any compartment occupied by the crew or passengers when the compartment is being accessed; and (3) in which an approved smoke detector or fire detector system is installed. Under the provisions of 49 CFR 175.85 (a) and (b), hazardous materials transported in a Class B compartment must be inaccessible to passengers but accessible to crew members.

In the event of a fire in a Class B cargo compartment, protective breathing equipment should protect crew members from smoke and fumes. However, supplemental oxygen breathing systems for passengers are designed to provide a combination of supplemental oxygen and ambient cabin

air for use in emergency decompression situations. These breathing systems are not designed to protect passengers from smoke and fumes, and passengers would continue to inhale some amount of ambient air in the cabin. According to FAA, a fire fed by a secondary source of oxygen would create additional smoke and fume risks to passengers that would not otherwise be present in fires that are not fed by a secondary source of oxygen. Dangerous or even fatal levels of smoke and fumes are more likely to develop and migrate to the passenger cabin when a fire is fed by a secondary source of oxygen.

According to the FAA, even if a halon fire-suppressant system is present, although effective against most fires, it may not be effective against an oxidizer-fed fire. If a water fire extinguisher is used, it may not have a sufficient quantity of water to extinguish a fire that continues to reignite because it is being fed by an oxygen source. Although all areas of a Class B compartment must be accessible to the contents of a hand-held fire extinguisher, oxidizers stowed in a compartment where other materials are burning may be difficult or impossible to remove or otherwise keep away from the fire.

Class C Compartments

A Class C compartment is not accessible during flight but has: (1) An approved smoke detector or fire detector system; (2) an approved built-in fire-extinguishing system; (3) means to control ventilation and drafts so that the extinguishing agent can control a fire that may start within the compartment; and (4) means to exclude hazardous quantities of smoke, flames or extinguishing agent from any compartment occupied by crew or passengers.

While Class C cargo compartments have safety features that can control most types of fires, RSPA and FAA believe that an oxygen-fed fire can overcome these safety features and pose an unacceptable risk in the aviation environment. Moreover, an oxygen-fed fire in a Class C compartment may present a greater risk than a fire in a Class B compartment. Unlike a Class B compartment that a crew member can physically enter, a Class C compartment is not physically accessible to crew members. Thus, for a Class C compartment, there is no possibility for a crew member to remove an oxidizer from the area of the fire or to attack the fire with a hand-held extinguisher.

A fire that is fed by a secondary source of oxygen increases the risk that flames, toxic smoke or fumes may cause injury or death. It also increases the risk that control of the aircraft will be lost. This may be caused by damage to the aircraft's flight control cables, hydraulic systems, electrical systems or structure, or entry of fire and smoke into the aircraft's cabin. For the reasons set forth above, RSPA is proposing to prohibit the transportation of oxidizers aboard passenger-carrying aircraft and in inaccessible locations aboard cargo aircraft.

V. Exceptions for Carriage of Oxygen on Passenger-carrying Aircraft

RSPA is proposing to add a special provision in § 172.102 and to the Hazardous Materials Table entry for ''Oxygen, compressed,'' to clarify that certain exceptions are provided in § 175.10 for carriage of oxygen on passenger-carrying aircraft. These exceptions, some of which are in the HMR at present and some of which are proposed in this notice, are discussed in the following paragraphs.

Oxygen for Use of Passengers During Flight

The proposed prohibition against transportation of oxidizers as cargo would not affect the existing exception in 49 CFR 175.10(a)(7) for operator-supplied oxygen for a passenger's use during flight or the exception in 49 CFR 175.10(a)(14) for a transport incubator unit necessary to protect life, or an organ preservation unit necessary to protect human organs.

As proposed in the December 30, 1996 NPRM, RSPA is proposing an editorial change to § 175.10(a)(7) to clarify that this exception applies only to oxygen furnished by an aircraft operator for medical use of an onboard passenger and does not allow the aircraft operator to transport medical oxygen cylinders as cargo in order to move them to the locations where they will be needed, at a later time, for use by passengers. This proposal is included in the regulatory text of this supplemental NPRM for convenience of the reader.

Personal Use Chemical Oxygen Generators in Checked Baggage

As proposed in the December 30, 1996 NPRM, RSPA is proposing in this supplemental NPRM to remove the exception provided in § 175.10(a)(24) for small personal chemical oxygen generators in checked baggage. See the December 30, 1996 NPRM for additional discussion of this proposal.

Aircraft Operators' and Passengers' Own Oxygen Cylinders

In this supplemental NPRM, RSPA is proposing provisions by which an aircraft operator may transport limited numbers of the operator's own cylinders (e.g., replacements for cylinders required aboard an aircraft or cylinders being returned for maintenance) containing compressed oxygen aboard passenger-carrying aircraft and by which an air carrier may transport a cylinder belonging to a passenger needing oxygen at destination for personal medical use.

As indicated in the December 30, 1996 NPRM, FAA supports a complete removal of oxidizers from passenger-carrying aircraft but also believes that, if it is necessary to allow a passenger to transport his or her own oxygen cylinder for use at destination, it is far safer to stow the cylinder in the passenger cabin, under the control of and accessible to the airline crew, than in an inaccessible cargo compartment. FAA does not believe that oxygen should be carried in inaccessible cargo compartments. FAA believes that, if an oxygen cylinder is involved in a fire, the release of oxygen will intensify the fire and a fire that might otherwise be survivable has an increased risk of becoming fatal. Thus, FAA believes that it would be safer to carry personal medical oxygen cylinders in the cabin because the crew could quickly remove the cylinders from any fire area in the cabin. This is in contrast to the complete inability of the crew to remove compressed oxygen from an inaccessible cargo compartment.

RSPA believes that oxygen can be safely transported aboard passenger-carrying aircraft and that there is a continuing need, for reasons of safety, service to passengers and potential cost impacts of a total prohibition, to permit an airline to transport its own oxygen cylinders and to transport a cylinder belonging to a passenger needing oxygen at destination for personal medical use. RSPA's proposal provides airlines a means of using their own passenger-carrying aircraft to position oxygen cylinders needed by passengers on subsequent flights or to place oxygen cylinders used on aircraft, such as those used for the flight crew's personal breathing equipment or emergency-use medical oxygen. Although oxygen cylinders required on aircraft by FAA regulations are not subject to the HMR, replacements carried aboard aircraft are. This proposed exception will provide an alternative to cargo aircraft or surface transportation for prepositioning essential supplies of oxygen.

At present, a passenger who needs supplemental oxygen may ship it in conformance with the HMR when it is offered and accepted as air cargo by an airline that is capable and willing to transport hazardous materials and has procedures for handling hazardous materials which have been approved by the FAA under existing rules (e.g., 14 CFR 121.25, 121.135, 135.21, and 135.23). It may be carried as cargo (i.e., as freight rather than as checked baggage) on the same aircraft carrying the passenger. The advantage is that the passenger would have that oxygen available for use at destination without having to arrange with an oxygen supplier, if one services the destination airport, to charge the passenger's cylinder or provide a supplier-owned charged cylinder upon arrival.

Under this proposed rule, carriage of oxygen in cargo compartments on passenger-carrying aircraft would no longer be permitted. However, the exception proposed in § 175.10(b) would permit an airline to carry a passenger's oxygen cylinder on the same aircraft as the passenger in the same manner as the airline carries its own cylinders. The oxygen cylinder would not be available to the passenger during flight; only oxygen furnished by the aircraft operator under the provisions of 49 CFR 175.10(a)(7) would be available for use during flight.

Based on FAA's assessment of the potential hazards of compressed oxygen in a cargo compartment, RSPA is proposing much more restrictive provisions for its carriage on passenger-carrying aircraft than currently apply, particularly that the oxygen be carried only in the cabin of the aircraft. The aircraft operator would be limited to no more than six of its own cylinders and no more than one cylinder belonging to each passenger needing the oxygen at destination, and would have to overpack each cylinder in a fire-resistant metal or plastic case. A passenger's cylinder would be limited in rated capacity to 850 liters (30 cubic feet) or less of oxygen.

In addition to being labeled for the oxygen hazard (i.e., with either Oxygen or Non-Flammable Gas and Oxidizer labels, as specified in subpart D of Part 172), each cylinder and overpack would be required to be labeled with a Cargo Aircraft Only label to ensure that the overpack does not get placed in any cargo compartment on a passenger-carrying aircraft or in an inaccessible compartment or location when transported on cargo aircraft. The overpack would be marked with the proper shipping name and identification number (i.e., Oxygen, Compressed, UN1072), and with the statement ''Passenger cabin acceptable per 49 CFR 175.10'' to explain the apparent discrepancy concerning appearance of a Cargo Aircraft Only label on an overpack in the cabin of a passenger-carrying aircraft.

Prior to placing a cylinder in an overpack, the aircraft operator would be required to check that the cylinder's valves are closed and the cylinder is free of flammable contaminants. The aircraft operator would then stow the overpack in the passenger cabin in accordance with procedures approved by the FAA and notify the pilot-in-command as to the presence and location of the cylinder. Air carriers currently are required to have FAA-approved procedures in operations manuals, plans or specifications if they carry hazardous materials.

RSPA currently permits the carriage of oxygen cylinders in passenger compartments by several aircraft operators under the provisions of an exemption, DOT–E 10114. The purpose of the exemption is to facilitate the predeployment, and return for maintenance, of cylinders owned and maintained by an aircraft operator for use by passengers needing oxygen during flight. The provisions of the exemption serve as a basis for this rulemaking proposal and, although not authorized under the exemption, have been expanded to cover carriage by an aircraft operator of a passenger's own cylinder. RSPA anticipates that the exemption would no longer be necessary if this proposal becomes a final rule.

VI. Effects on Individuals With Disabilities

RSPA and FAA believe that exceptions for shipment and use of oxygen proposed in 49 CFR 175.10(b) eliminate any negative effects this rulemaking may have on passengers who need supplemental breathing oxygen when they disembark from aircraft at their destination and on the ability of airlines to preposition or stage oxygen at various locations for use by passengers. RSPA is interested in receiving comments from oxygen users, air carriers, and suppliers of oxygen about these effects and whether the proposed provisions for carriage of oxygen in passenger cabins are a safe and feasible alternative to a total prohibition.

Under separate RSPA and FAA rules (49 CFR 175.10(a)(7), and 14 CFR 121.574 and 135.91, respectively), which this proposal would not amend, passengers may not carry their own oxygen aboard aircraft for use during flight. Air carriers are permitted to provide oxygen for passenger use in accordance with specified requirements in the aforementioned rules, although some air carriers may not provide this service for their passengers. RSPA seeks comment on whether the new proposed provisions placed on carriage of air carriers' own oxygen cylinders will significantly interfere with carriers' ability to provide this service to passengers. Also, compressed oxygen, while regulated as a hazardous material, is different in form from other oxidizers which are usually liquids and solids. RSPA requests comments as to whether there is any evidence (e.g., accident or incident information, studies, etc.) to suggest that gaseous oxygen in cylinders, as distinct from chemical oxidizers, poses or has created significant safety problems while being transported in cargo compartments.

FAA, RSPA, and the Office of the Secretary are initiating a project separate from this rulemaking action to explore whether safe alternatives exist for accommodating passenger needs in regard to use of oxygen. This project could result in proposals to amend the relevant portions of the HMR and FAA regulations as well as those of the Office of the Secretary implementing the Air Carrier Access Act of 1986 (49 U.S.C. 41705), which prohibits discrimination in regard to air traveler access on the basis of disability.

VII. Spent Oxygen Generators

RSPA is proposing to prohibit the transportation by aircraft of spent chemical oxygen generators (i.e., generators in which the means of initiation and the chemical core have been expended) and to regulate them as Class 9 materials when transported by other than aircraft. This proposal was not in the December 30, 1996 NPRM.

Spent chemical oxygen generators currently may be regulated as hazardous wastes because of the residual materials contained therein. They may also pose a hazard in transportation by containing unburned oxidizing materials.

Regardless of the degree of hazard posed by the chemical contents, it can be difficult to confirm that a generator truly is spent. Human error in assessing whether such devices are, in fact, empty can result in a catastrophe. RSPA and FAA believe that lessening the possibility that this type of human error may occur outweighs any interest or need for transporting spent chemical oxygen generators by aircraft.

Based on the foregoing, RSPA is proposing to add to the Hazardous Materials Table (HMT) an entry for spent chemical oxygen generators. A

new shipping description, ''Oxygen generator, chemical, spent, 9, NA3356, III'' would be added. The entry would be preceded by a plus (''+'') in Column 1 to fix the proper shipping name, hazard class and packing group for the entry without regard to whether the material meets the definition of Class 9 or Packing Group III. Special provision 61 would be added in Column 7 to specify the conditions under which an oxygen generator is considered ''spent.'' For transportation aboard passenger-carrying and cargo aircraft, Columns 9a and 9b would read ''Forbidden.'' RSPA also proposes to amend §§ 171.11, 171.12 and 171.12a, consistent with its proposal in the December 30, 1996 NPRM, to indicate that there are no exceptions from HMR requirements for classification, description, and packaging of spent chemical oxygen generators when shipping to, from or within the U.S. under the provisions of international or Canadian regulations.

VIII. Cost/Benefit Analysis

Analysis of Costs

The preliminary regulatory evaluation ''Prohibition of Oxidizers and Oxidizing Materials as Cargo in Aircraft'' (June 1997) developed in support of this supplemental NPRM revises the earlier estimate of 10-year costs associated with the December 30, 1996 proposal to prohibit oxidizers in Class D cargo compartments from $25 million ($17 million, discounted) to $18 million ($12 million, discounted). This supplemental NPRM would impose additional costs on air carriers by prohibiting oxidizers in Class B and C cargo compartments on passenger aircraft and all inaccessible compartments in cargo-only aircraft. The additional cost of compliance (in the form of lost revenue) to air carriers imposed by this proposal is estimated to be $17 million ($12 million, discounted), in 1996 dollars, over the next 10 years.

RSPA and FAA are aware that the estimated cost associated with the proposed prohibition on oxidizers does not include any reduction in variable operating costs, such as fuel savings, that may result due to less weight being carried aboard the aircraft. In addition, this cost estimate may not represent a net loss to the aviation industry, as RSPA and FAA expect much of the affected traffic would shift to cargo-only operators. Overall cost to the aviation industry may, therefore, be less than the 10-year costs estimated for this proposed rule.

RSPA and FAA have not identified any cost impacts to cargo aircraft carriers, but recognize there could, nonetheless, be potential logistical impacts. Occasionally, hazardous materials are tendered for shipment that are not compatible and must be separated during transport. Currently, these materials may be transported in separate compartments. Therefore, the proposed rule may have an impact upon cargo airlines because of the airline's inability to transport incompatible hazardous materials on the same flight. As a result, one of the hazardous materials tendered to the airline for transport may experience a delay. RSPA solicits information from cargo-only aircraft operators that may incur this, or other, costs due to implementation of the proposed rule.

RSPA and FAA expect that the total compliance cost to the aviation industry attributed to this proposed rule would be borne by operators of passenger-carrying aircraft.

This supplemental NPRM expands, also, the prohibition of carriage of chemical oxygen generators aboard passenger-carrying aircraft by proposing to prohibit the shipment of spent chemical oxygen generators on aircraft. Because a spent chemical oxygen generator has no residual or economic value, and there is no urgent need to ship it by aircraft, RSPA and FAA determined there is essentially no adverse cost impact associated with the proposed prohibition.

RSPA has received comments on the potential costs of the NPRM. These comments and cost-related comments to this supplemental NPRM will be taken into account in developing a final regulatory evaluation prior to issuance of a final rule.

Analysis of Benefits

Notwithstanding current regulatory restrictions, hazardous materials, including oxidizers, are occasionally improperly carried in airplane cargo compartments through inadvertent or deliberate package mislabeling. Over the past 10 years, there are only two documented incidents where oxidizers (of types other than chemical oxygen generators) were known to be present in the cargo compartment of a U.S. air carrier when a fire occurred. Those incidents resulted only in minor injuries and damage, though damage from one of the fires extended outside the cargo compartment. RSPA and FAA believe, however, that the risk of fire as evidenced by the number of actual fires that have occurred justifies this proposed prohibition on the carriage of oxidizers in inaccessible cargo compartments.

One analytical tool commonly used in the statistical analysis of rare events is the Poisson probability distribution. This tool provides a means to statistically estimate the probability of the occurrence of rare and random events based on an observed rate of occurrence. In the case of cargo compartment fires in the presence of oxidizers, the observed mean is two over 10 years. The Poisson probability distribution with a mean of two suggests there is a small chance (14 percent) that there would be no oxidizer fires in the next decade based on the past accident history. However, there is an 86 percent probability of one or more such fires. In addition, there is a 14 percent probability that there would be four or more fires with oxidizers present.

Any one of these probable events could be more serious than the two reported incidents. According to the FAA, fire aboard an aircraft is one of the greatest threats to safety that can happen in air transportation. For example, an Air Canada flight from Dallas in 1983 made an emergency landing at the Greater Cincinnati International Airport because of a fire of undetermined origin. As soon as the airplane stopped, it was evacuated. However, 23 passengers were unable to exit the aircraft before the interior was engulfed in a flash fire. In 1983 a British Airtours flight was aborted during takeoff and 55 of the 137 persons onboard were unable to evacuate before a fire engulfed and destroyed the aircraft.

With respect to spent chemical oxygen generators, the Poisson probability distribution with a mean of four suggests, in the absence of any regulatory action, that there is only a 2 percent probability of no chemical oxygen generator fire in the next decade, based on actual incident and accident history. But, there is a 98 percent probability there will be one or more such fires in the same time period. In the absence of a regulatory prohibition on their carriage, there is a 57 percent probability of four or more incidents and accidents in the next 10 years, as there were in the last 10 years, involving chemical oxygen generators.

To determine the potential benefits that would result from this proposed rule, RSPA and FAA estimated the average costs associated with potential future fire accidents involving ''spent'' chemical oxygen generators. In the May 11, 1996 incident, there were 110 casualties and a McDonnell Douglas DC–9–32 was destroyed. The monetary value of this loss was ascertained in several steps. First, a critical economic value of $2.7 million was applied to each human casualty. This computation resulted in an estimate of $297 million ($2.7 million x 110). Next the value of

the destroyed aircraft was estimated to be $6 million. If this rulemaking prevents one such catastrophic incident over the next 10 years, the expected value of potential safety benefits would be $303 million ($213 million, discounted).

This supplemental NPRM reduces the chance that a cargo compartment fire will be enhanced by an oxidizer, thereby increasing the likelihood that a cargo compartment fire would be successfully contained or extinguished. One measure of calculating whether the proposed prohibition on oxidizers is cost-beneficial is to determine if it would prevent incidents that otherwise would claim at least thirteen lives over the next 10 years. RSPA and FAA are confident this proposed prohibition has the potential to achieve that level of benefits.

Relation to FAA Rulemaking on Cargo Compartments

The FAA has proposed to upgrade fire safety standard for cargo or baggage compartments by eliminating Class D compartments and requiring their conversion to the equivalent of Class C or Class E compartments. The NPRM is entitled ''Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes,'' 62 FR 32412 (June 13, 1997). While the benefits of these two proposed rules would overlap somewhat, each of them will also provide benefits that the other would not. The FAA's proposed rule addresses the risks of any fire in an inaccessible cargo compartment that lacks fire or smoke detection and suppression (including a situation when no oxidizer is present). This proposed rule addresses the risks of transporting an oxidizer on board a passenger-carrying aircraft (even when carried in a compartment with fire or smoke detection and suppression equipment). FAA has determined that both initiatives would yield benefits that justify their costs, 62 FR 32420, but interested parties are invited to submit comments on the potential for overlap in the benefits of these two proposed rules.

Comparison of Costs and Benefits

The proposed restrictions contained in the NPRM and this supplemental NPRM would impose an estimated 10-year cost of $35 million ($24 million, discounted) by prohibiting the shipment of oxidizers on passenger-carrying aircraft, and no identified costs by prohibiting the shipment of spent oxygen generators on passenger-carrying aircraft. While RSPA and FAA have been unable to estimate quantitative potential safety benefits for prohibiting the shipment of oxidizers, the high level of risk created by the presence of those hazardous materials aboard aircraft warrants adoption of the prohibitions. Preventing one catastrophic incident like the May 11, 1996 ValuJet accident, would result in calculated safety benefits of $303 million ($213 million, discounted over ten years).

IX. Request for Additional Comments

RSPA requests that interested parties provide additional information concerning the costs and benefits of this proposed action. RSPA also requests information concerning the hazards posed by oxidizers in aircraft cargo compartments that have fire detection or suppression systems. RSPA requests that shippers and carriers, including foreign carriers, provide detailed cost information to RSPA as to the type and amounts of any costs that may result from the proposed prohibition of oxidizers on passenger-carrying aircraft.

In evaluating the costs and benefits of the proposed rule, RSPA and FAA have assumed that cargo aircraft operators would not incur any costs because of their ability to transport oxidizers in accessible cargo compartments of an aircraft. In addition, RSPA and FAA have assumed that there would be little or no impact on shippers of oxidizers because of the availability of other means of transportation (e.g., cargo aircraft or highway transportation).

RSPA and FAA have not assessed the costs associated with prohibiting the shipment of oxygen cylinders on passenger-carrying aircraft. Although the proposed exceptions in § 175.10(b) serve to mitigate any adverse impacts, there may be some costs to air carriers if they routinely use passenger-carrying aircraft to transport, as cargo, oxygen cylinders which are normally installed or required on aircraft and must be periodically retested or refilled, or which are prepositioned for use by passengers on subsequent flights. Therefore, RSPA requests information concerning the costs and benefits of prohibiting cylinders containing oxygen, aboard passenger-carrying aircraft. Please provide detailed information as to the manner by which costs may be incurred. In particular, RSPA requests information on (1) the number of cylinders of oxygen which are transported each day on passenger-carrying aircraft; (2) the typical size of these cylinders; (3) other means of transportation that are available; and (4) the cost differences to the airlines for using other means of transportation.

RSPA requests comments concerning any hardships that may be caused in remote areas, such as Alaska, where frequent cargo-only air service may not be available, and suggestions for limiting this hardship.

By limiting the prohibition on oxidizers to packages required to be labeled Oxidizer and Oxygen, the prohibition would not apply to oxidizers renamed ''consumer commodity'' and reclassed as ORM–D under the provisions of § 173.152, or as consumer commodities, Class 9, as permitted under § 171.11. RSPA requests comments regarding whether it would be appropriate to extend this prohibition to consumer commodities which are oxidizers or whether more restrictive packaging, per package quantity limits, or aircraft quantity limits should be imposed on these materials.

X. Study To Assess the Risks Associated With Transportation of Hazardous Materials in Aircraft Cargo Compartments

RSPA, in coordination with FAA, has initiated a study to assess the risks associated with the transportation of hazardous materials in aircraft cargo compartments. As beginning steps, RSPA assembled a panel of experts and held meetings in Cambridge, Massachusetts on October 22 and 23, 1996, and in Washington, D.C. on June 10 through 12, 1997, for purposes of identifying accident scenarios, probabilities of occurrence, and expected consequences. In attendance at the meetings were representatives from the NTSB, FAA, Air Transport Association of America, Chemical Manufacturers Association, Air Line Pilots Association, International Air Line Passenger Association and several aircraft manufacturers. Based on the outcome of this study, RSPA may initiate rulemaking to prohibit or further limit the transportation of other types of hazardous materials on aircraft.

XI. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A preliminary regulatory evaluation is available for review in the public docket. A summary of the costs and benefits of this supplemental NPRM is set forth in Section VIII of this preamble.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This proposed rule would require oxidizers to be transported in certain types of cargo compartments aboard aircraft. RSPA solicits comments on whether the proposed rule would have any effect on State, local or Indian tribe requirements and, if so, the most appropriate effective date of Federal preemption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit organizations which are independently owned and operated, and small government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules which may have ''a significant economic impact on a substantial number of small entities.'' Since this proposed rule would primarily impact those entities operating under 14 CFR part 121, RSPA and FAA adopted the Federal Aviation Administration (FAA) Order 2100.14A (Regulatory Flexibility Criteria and Guidance) as the standard by which the potential impact on small entities would be determined. The potential impact on small entities is the cost (revenue losses) incurred by carriers that currently transport oxidizers and spent chemical oxygen generators. There is very little data to determine the proposed rule's economic impact on entities other than those operating under 14 CFR part 121 (e.g., part 135 operators). Therefore, RSPA requests comments on the economic impact, if any, of this proposed rule on other entities.

According to FAA Order 2100.14A, a substantial number of small entities is defined as a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule. A significant economic impact refers to the annualized threshold assigned to each entity group potentially impacted by rulemaking actions. For this proposed rule, the small entities are eight 14 CFR part operators (scheduled and non-scheduled) that carry hazardous materials. The annualized significant economic impact threshold for non-scheduled aircraft operators is estimated to be $4,900. Similarly, the annualized significant economic impact threshold for scheduled aircraft operators is estimated to be $70,100 (operators with less than 60 passenger seats) and $125,500 (operators with more than 60 passenger seats).

A small entity is defined in the FAA Order 2100.14A as an operator of aircraft for hire with nine or fewer aircraft owned but not necessarily operated. RSPA and FAA identified a total of eight operators that meet this definition. Those operators comprise two groups: (1) Non-scheduled small part 121 operators and (2) scheduled small part 121 operators.

To determine the impact of the proposed rule on these small entities, RSPA and FAA estimated the annualized cost impact on each of those small entities within the two groups. The annualized cost impact per small entity is based on the annual number of ton miles for oxidizer shipments times the respective revenue-per-ton-mile estimate.

Small Entities, Non-scheduled

RSPA and FAA determined there are six non-scheduled part 121 aircraft operators that meet the definition of a small entity. Of the six small entities within this group, only two would have annualized costs that exceed the significant economic impact threshold of $4,900. While one-third of the above aircraft operators would incur significant economic costs, a substantial number of them would not be impacted because their number is less than eleven.

Small Entities, Scheduled

RSPA and FAA also determined that there are two part 121 scheduled aircraft operators that meet the definition of a small entity. The ten-year estimated cost of compliance for the scheduled entity with less than 60 passenger seats would be $60,000 ($42,200, discounted). Similarly, for the entity with more than 60 passenger seats, the ten-year cost of compliance would be $9,800 ($6,900, discounted). Over a ten-year period, the annualized potential cost of compliance for the entity with less than 60 passenger seats and the entity with more than 60 passenger seats would be $6,000 and $1,000, respectively. These annualized cost of compliance estimates are far less than their respective significant economic thresholds of $70,100 and $125,500.

Based upon the above, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. While the proposed rule would have a significant economic impact on two of the eight small entities examined in this analysis, it would not impact a substantial number of those small entities.

Paperwork Reduction Act

This supplemental notice of proposed rulemaking does not impose any new information collection requirements.

Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and

containers, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, and 175 are proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.11, paragraph (d)(15) is revised and paragraph (d)(16) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(15) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter and an oxygen generator, chemical, spent, must be classed, described and packaged in accordance with the requirements of this subchapter.

(16) A package containing a hazardous material for which an Oxidizer or Oxygen label is required under part 172, subpart E, of this subchapter, may not be offered for transportation or transported in a passenger-carrying aircraft except as specified in this subchapter.

3. In § 171.12, paragraph (b)(18) is revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(18) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter and an oxygen generator, chemical, spent, must be classed, described and packaged in accordance with the requirements of this subchapter.

* * * * *

4. In § 171.12a, paragraph (b)(17) is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(17) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter and an oxygen generator, chemical, spent, must be classed, described and packaged in accordance with the requirements of this subchapter.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In the § 172.101 Hazardous Materials Table, the following entry is added in appropriate alphabetical order:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
*	*	*		*		*			*		*		
+	Oxygen generator, chemical, spent	9	NA3356	III	9	61	None	213	None	Forbidden	Forbidden	A	
*	*	*		*		*			*		*		

§ 172.101 [Amended]

7. In addition, in the § 172.101 Hazardous Materials Table, Column (9A) is amended by removing the existing language and adding the word ''Forbidden'' for the following entries:

Aluminum nitrate
Ammonium dichromate
Ammonium nitrate fertilizers
Ammonium nitrate fertilizers; *uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90 percent ammonium nitrate and not more than 0.2 percent combustible material (including organic material calculated as carbon), or with more than 70 percent but less than 90 percent ammonium nitrate and not more than 0.4 percent total combustible material*
Ammonium nitrate mixed fertilizers
Ammonium nitrate, *with not more than 0.2 percent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance*
Ammonium perchlorate (PG II)
Ammonium persulfate
Barium bromate
Barium chlorate
Barium hypochlorite *with more than 22 percent available chlorine*
Barium nitrate
Barium perchlorate
Barium permanganate
Barium peroxide
Beryllium nitrate
Bromate, inorganic, aqueous solution, n.o.s.
Bromate, inorganic, n.o.s.
Calcium chlorate
Calcium chlorate aqueous solution
Calcium chlorite
Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry *with more than 39 percent available chlorine (8.8 percent available oxygen)*
Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water*
Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine*
Calcium nitrate
Calcium perchlorate
Calcium permanganate
Calcium peroxide
Cesium nitrate *or* Caesium nitrate
Chlorate and borate mixtures (PG II and III)
Chlorate and magnesium chloride mixtures (PG II and III)
Chlorates, inorganic, aqueous solution, n.o.s.
Chlorates, inorganic, n.o.s.
Chlorites, inorganic, n.o.s.
Chromic acid, solid
Chromium nitrate
Chromium trioxide, anhydrous
Compressed gas, oxidizing, n.o.s.
Copper chlorate
Corrosive liquids, oxidizing, n.o.s. (PG II)
Corrosive solids, oxidizing, n.o.s. (PG I and II)
Dichloroisocyanuric acid, dry *or* Dichloroisocyanuric acid salts
Didymium nitrate
Ferric nitrate
Guanidine nitrate
Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid*
Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary)*
Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)*
Hypochlorites, inorganic, n.o.s.
Lead dioxide
Lead nitrate
Lead perchlorate, solid
Lead perchlorate, solution
Liquefied gas, oxidizing, n.o.s.
Lithium hypochlorite, dry *or* Lithium hypochlorite mixtures, dry
Lithium nitrate
Lithium peroxide
Magnesium bromate
Magnesium chlorate
Magnesium nitrate
Magnesium perchlorate
Magnesium peroxide
Manganese nitrate
Medicines, *oxidizing substance, solid* n.o.s.
Nickel nitrate
Nickel nitrite
Nitrates, inorganic, aqueous solution, n.o.s. (PG II and III)
Nitrates, inorganic, n.o.s. (PG II and III)
Nitrites, inorganic, aqueous solution, n.o.s. (PG II and III)
Nitrites, inorganic, n.o.s.
Nitrous oxide, compressed
Oxidizing liquid, corrosive, n.o.s. (PG II and III)
Oxidizing liquid, n.o.s. (PG I, II and III)
Oxidizing liquid, toxic, n.o.s. (PG II and III)
Oxidizing solid, corrosive, n.o.s. (PG I, II and III)
Oxidizing solid, n.o.s. (PG I, II, and III)
Oxidizing solid, toxic, n.o.s. (PG I, II, and III)
Oxygen, compressed
Perchlorates, inorganic, aqueous solution, n.o.s. (PG II and III)
Perchlorates, inorganic, n.o.s. (PG II and III)
Permanganates, inorganic, aqueous solution, n.o.s.
Permanganates, inorganic, n.o.s. (PG II and III)
Peroxides, inorganic, n.o.s. (PG II and III)
Persulfates, inorganic, aqueous solution, n.o.s.
Persulfates, inorganic, n.o.s.
Potassium bromate
Potassium chlorate
Potassium chlorate, aqueous solution (PG II and III)
Potassium nitrate
Potassium nitrate and sodium nitrite mixtures
Potassium nitrite
Potassium perchlorate, solid
Potassium perchlorate, solution
Potassium permanganate
Potassium persulfate
Silver nitrate
Sodium bromate
Sodium chlorate
Sodium chlorate, aqueous solution (PG II and III)
Sodium chlorite
Sodium nitrate
Sodium nitrate and potassium nitrate mixtures
Sodium nitrite
Sodium perchlorate
Sodium permanganate
Sodium peroxoborate, anhydrous
Sodium persulfate
Strontium chlorate
Strontium nitrate
Strontium perchlorate
Strontium peroxide
Thallium chlorate
Thallium nitrate
Toxic liquids, oxidizing, n.o.s. (PG II)
Toxic solids, oxidizing, n.o.s. (PG I and II)
mono- (Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*with more than 39 percent available chlorine)*
Trichloroisocyanuric acid, dry
Urea hydrogen peroxide
Zinc ammonium nitrite
Zinc bromate
Zinc chlorate
Zinc nitrate
Zinc permanganate
Zinc peroxide
Zirconium nitrate

§ 172.101 [Amended]

8. In addition, in the § 172.101 Hazardous Materials Table, for the entry ''Oxygen, compressed'', in Column (7), special provision ''A52'' is added.

9. In § 172.102, special provision ''61'' is added in appropriate numerical sequence to paragraph (c)(1) and special provision ''A52'' is added in appropriate alphanumerical sequence to paragraph (c)(2), to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

61 A chemical oxygen generator is spent if its means of ignition and its chemical core have been expended.

* * * * *

(2) * * *

Code/Special Provisions

* * * * *

A52 Oxygen, compressed, may be offered for transportation and transported on a passenger-carrying aircraft in accordance with the provisions of § 175.10(a)(7), (a)(14), or (b) of this subchapter.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

9a. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. In § 175.10, paragraph (b) is added to read as follows:

§ 175.10 Exceptions.

* * * * *

(b) A cylinder containing compressed oxygen, belonging to an aircraft operator or a passenger needing the oxygen for personal medical use at destination, may be carried in the cabin of a passenger-carrying aircraft in accordance with procedures approved by the FAA and specified in the carrier's operations specifications, manual or plan, as appropriate, and the following provisions:

(1) No more than six cylinders belonging to the aircraft operator and, in addition, no more than one cylinder (with a rated oxygen capacity of 850 liters (30 cubic feet) or less) per passenger needing the oxygen, may be transported on an aircraft under the provisions of paragraph (b);

(2) Each cylinder must conform to the provisions of this subchapter with regard to packaging specifications, fill limits, maintenance requirements, marking and labeling;

(3) Each cylinder shall be examined by the aircraft operator to ensure that all valves are closed and the cylinder is free of flammable contaminants on all exterior surfaces;

(4) Each cylinder shall be placed in a metal or plastic overpack which—

(i) Is capable of meeting the self extinguishing requirements of 14 CFR 25.853;

(ii) Provides protection to the cylinder and valves;

(iii) Is marked ''Oxygen, Compressed'', ''UN1072'', and ''Passenger cabin acceptable per 49 CFR 175.10''; and

(iv) Is labeled Cargo Aircraft Only and either Oxygen or Non-Flammable Gas and Oxidizer, in accordance with subpart D of part 172 of this subchapter;

(5) The aircraft operator shall securely stow the overpack in the cabin of the aircraft in accordance with the operator's operations procedures and shall notify the pilot-in-command as specified in § 175.33; and

(6) Shipments under this paragraph (b) are not subject to—

(i) The prohibition in § 172.101 of this subchapter against carriage of compressed oxygen on passenger-carrying aircraft;

(ii) Subpart C and, for passengers only, subpart H of part 172 of this subchapter;

(iii) Section 173.25 of this subchapter; or

(iv) Section 175.85.

§ 175.10 [Amended]

11. In addition in § 175.10, in paragraph (a)(7) the wording ''a passenger'' in the first sentence is revised to read ''an onboard passenger'' and paragraph (a)(24) is removed and reserved.

12. In § 175.85, paragraph (b) is revised to read as follows:

§ 175.85 Cargo location.

* * * * *

(b) Each package bearing a Cargo Aircraft Only label or which otherwise contains a hazardous material acceptable only for cargo aircraft must be loaded in such a manner that a crew member or other authorized person can see, handle and when size and weight permit, separate such packages from other cargo during flight.

* * * * *

Issued in Washington, DC on August 12, 1997, under the authority delegated in 49 CFR part 106.

A.I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–21739 Filed 8–19–97; 8:45 am]

BILLING CODE 4910–60–P

federal register

Wednesday
August 20, 1997

Part VI

Department of Health and Human Services

National Institutes of Health

Office of Recombinant DNA Activities: Gene Therapy Policy Conference; Recombinant DNA Advisory Committee Meeting; and Proposed Recombinant DNA Research Actions Under NIH Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Recombinant DNA Activities; Notice of Gene Therapy Policy Conference

Notice is hereby given of a Gene Therapy Policy Conference entitled: Human Gene Transfer—Beyond Life-threatening Disease, on September 11, 1997. The conference will be held at the Bethesda Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814, starting on September 11, 1997, at approximately 8:00 a.m., and will recess at approximately 5:30 p.m. The conference will be open to the public and free of charge; however, registration is required. Registration is available online at http://www.nih.gov/od/orda or you can contact Dr. Elham-Eid Alldredge, REDA International, 11141 Georgia Avenue, Suite 517, Wheaton, Maryland 20902, Phone 301–946–9790, Fax 301–946–1911. Dr. Alldredge will provide conference information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Alldredge in advance of the meeting.

On July 8, 1996, the NIH Director published a Notice of Intent to Propose Amendments to the NIH Guidelines for Research Involving Recombinant DNA Molecules Regarding Enhanced Oversight of Recombinant DNA Activities (61 FR 3577). One significant component of the NIH Director's proposal was to establish Gene Therapy Policy Conferences (GTPC). These conferences are intended to offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to specific recombinant DNA issues. In order to enhance the depth and value of scientific and ethical/social discussion, each GTPC will be devoted to a single issue relevant to scientific merit and/or safety as it relates to research on the use of novel gene delivery vehicles and applications to human gene therapy, novel applications of gene transfer, or relevant ethical/social implications of a particular application of gene transfer technology.

The findings and recommendations of each GTPC will be made available to multiple Department of Health and Human Services (DHHS) components, including the Food and Drug Administration (FDA) and the Office of Protection from Research Risks (OPRR).

The NIH Director anticipates that this expanded public policy forum will serve as a model of interagency communication and collaboration, concentrated expert discussion of novel scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and the potential impact of such applications on human health and the environment.

At its March 6–7, 1997 meeting, the RAC recommended that the first Gene Therapy Policy Conference (GTPC) should be held to discuss the scope of ethical and scientific issues regarding genetic enhancement and the inclusion of normal subjects in human gene transfer protocols.

The first CTPC is scheduled for September 11, 1997. The title of this first GTPC is: Human Gene Transfer—Beyond Life-threatening Disease. The tentative topics for discussion during this conference are: (1) Scientific prospects for enhancement through gene therapy. This topic will cover the following issues: (a) Historical perspective, current state, and theoretical feasibility; (b) prospects for ''preventive'' gene therapies that enhance organ or system function; and (c) assessing the long-term safety and efficacy of enhancement gene therapies. (2) The treatment/enhancement distinction: conceptual, ethical and social issues. This topic will cover the following issues: (a) Ethical and social concerns; and (b) conceptual clarification of treatment/enhancement distinction, and (3) Development of a ''treatment/enhancement'' distinction as part of a guidance document. This topic will cover the following issues: (a) Operational criteria for treatment/enhancement distinction; (b) current regulatory significance of the distinction; and (c) development of a guidance framework/document.

The findings and recommendations of this conference will be submitted in the form of a report to the NIH Director.

Dated: August 11, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22028 Filed 8–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 12, 1997. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on September 12, 1997, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 11, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22029 Filed 8–19–97; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 12, 1997. After consideration of these proposals and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

DATES: Interested parties are invited to submit comments concerning this proposal. Comments received by September 5, 1997, will be reproduced and distributed to the RAC for consideration at its September 12, 1997, meeting. After consideration of this proposal and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

ADDRESSES: Written comments and recommendations should be submitted to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

All comments received in response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The Office of Recombinant DNA Activities web site is located at Http://www.nih.gov/od/orda for further information about the office.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines):

A. Amendment to the Submission Requirements—Human Gene Transfer Experiments Under Appendix M of the NIH Guidelines

During the June 12–13, 1997, RAC meeting, the following motions were approved by the Committee:

(1) A motion was made to eliminate the point-by-point responses to Appendix M–II, Description of the Proposal; however, the questions raised in Appendix M–II must be addressed in the clinical protocol. The motion passed by a vote of 8 in favor, 0 opposed, and 1 abstention.

(2) A motion was made that the RAC should not review any gene transfer protocol until the investigator has provided ORDA with evidence of protocol submission to the Institutional Biosafety Committee (IBC). IBC notification is needed in order to avoid the circumstances in which the RAC might review a protocol that has not been submitted to the IBC. The motion passed by a vote of 8 in favor, 1 opposed, and no abstentions.

(3) A motion was made to delete prior IBC and Institutional Review Board (IRB) approvals, responses to Appendix M–II through M–V, and vector sequence diskettes from Appendix M–I, Submission Requirements—Human Gene Transfer Experiments. The RAC accepted the submission requirements as follows:

''Appendix M–I, Submission Requirements—Human Gene Transfer Experiments''

''Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, 301–496–9838 (see exemption in Appendix M–IX–A, Footnotes of Appendix M). Proposals will be submitted in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) protocol (including discussion of issues in Appendix M–II through M–V); (4) Informed Consent document prepared for IRB submission (see Appendix M–III, Informed Consent); (5) letter stating that submission has been made to the IBC; (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae for each key professional person in biographical sketch format.''

The motion passed by a vote of 7 in favor, 0 opposed, and 1 abstention.

B. Amendment to Institutional Biosafety Committee (IBC) Approvals of Experiments Involving Transgenic Rodents Under Section III of the NIH Guidelines

Section III–C–4, Experiments Involving Whole Animals, of the NIH Guidelines stipulates that all transgenic animal experiments are subject to IBC approval before initiation. In correspondence dated April 22, 1997, Dr. George Gutman, an IBC representative of the University of California, Irvine, California, inquired whether experiments involving the production or use of transgenic mice under Biosafety Level 1 containment could be initiated simultaneously with IBC notification. Current requirements under the NIH Guidelines require that IBC approval be obtained prior to initiation of such experiments. The RAC discussed this issue during its June 1997 meeting, recommending that this requirement be changed to initiation simultaneous with IBC notification. The RAC agreed that the requirement of IBC approval prior to initiation is unnecessary and recommended that the NIH Guidelines should be amended such that: (1) The generation of transgenic rodents at the Biosafety Level 1 containment (not all animals) can be initiated simultaneous with IBC notification, and (2) the purchase and use of transgenic rodents should be exempt from the NIH Guidelines.

A motion was made that these proposed changes to the NIH Guidelines should be published in the **Federal Register** for consideration at the September 12, 1997, RAC meeting. The proposed action would allow: (1) The generation of transgenic rodents that require Biosafety Level 1 containment to be included under Section III–D, Experiments that Require IBC Notice Simultaneous with Initiation; and (2) the purchase and use of transgenic rodents should be exempt from the NIH Guidelines. The motion passed by a vote of 9 in favor, 0 opposed, and no abstentions.

C. The Dissociation of Simultaneous Submission of Responses to Appendix M of the NIH Guidelines to NIH/ORDA and the Food and Drug Administration (FDA)

In a letter dated November 20, 1996, Dr. Andra Miller, Food and Drug Administration, requested that the NIH Guidelines should be amended

regarding procedures for simultaneous submission of Appendix M material to the RAC and FDA. In her November 20, 1996, letter, Dr. Miller states:

''* * * To remove the requirement for submission of Appendix M to the FDA. The FDA does not accept Appendix M in place of an IND submission. The FDA is not proposed to be and need not be included in the decision making process to identify protocols to undergo full RAC review. Therefore, there is no reason for sponsors to submit Appendix M materials to the FDA.''

During its December 9, 1996, and March 6–7, 1997, meetings, the RAC discussed this issue. The consensus of the RAC was that the requirement for submission of responses of Appendix M to the FDA should be removed, since FDA does not accept responses to Appendix M in place of an Investigational New Drug (IND) application. However, the RAC stated that all human gene transfer protocols should include discussion of issues raised in Appendix M–II through M–V of the NIH Guidelines in the clinical protocols.

The NIH will consider the following proposed actions under the NIH Guidelines:

A. Proposed Amendments to Section I–A. Purpose

Section I–A–1–a is proposed to be amended to read:

''Section I–A–1–a''

''Section I–A–1–a. Experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) cannot be initiated without submission to NIH/ORDA of such information on the proposed experiment as is prescribed by this agency. Submission of human gene transfer protocols to the NIH will be in the format described in Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines. Submission to NIH shall be for registration purposes, a determination regarding the necessity for full RAC discussion, and to ensure continued public access to relevant human gene transfer information conducted in compliance with the NIH Guidelines.''

B. Proposed Amendments to Section III–A. Experiments That Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation (See Section IV–C–1–b–(1), Major Actions)

Section III–A–2 is proposed to be amended to read:

''Section III–A–2. Human Gene Transfer Experiments''

''Investigators must submit their human gene transfer proposal to the NIH in a single submission format. This format includes (but is not limited to) the documentation described in Appendix M–I, Submission Requirements—Human Gene Transfer Experiments. The NIH/ORDA in consultation with the RAC, will evaluate the proposal regarding the necessity for RAC review.

''Factors that may contribute to the necessity for RAC review include: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC review are those determined by the RAC and the NIH/ORDA not to represent possible risk to human health or the environment (see Appendix M–VII, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review). Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that the RAC requires review of the submitted proposal, all documentation described in Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, will be forwarded to the RAC primary reviewers for evaluation. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. The RAC prefers that information provided in the submission documentation contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC conditions must be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be considered as a Major Action by the NIH Director.

''**Note:** For specific directives concerning the use of retroviral vectors for gene delivery, consult Appendix B–V–1, Murine Retroviral Vectors.''

C. Proposed Amendments to Section III–C–4. Experiments Involving Whole Animals

(Section III–C are experiments that require Institutional Biosafety Committee approval before initiation.)

Section III–C–4–c is proposed to be amended to read:

''Section III–C–4–c. Exceptions under Section III–C–4.

''Section III–C–4–c–(1). Experiments involving the generation of transgenic rodents that require BL1 containment are described under Section III–D–3, Experiments Involving Transgenic Rodents.

''Section III–C–4–c–(2). The purchase and use of transgenic rodents is exempt from the NIH Guidelines under Section III–E, Exempt Experiments (see Appendix C–VI, The Purchase and Use of Transgenic Rodents).''

D. Proposed Amendments to Section III–D. Experiments That Require Institutional Biosafety Committee Notice Simultaneous With Initiation

Section III–D–3 is proposed to be amended to read:

''Section III–D–3. Experiments Involving Transgenic Rodent''

''This section covers experiments involving the generation of rodents in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic rodents). Only experiments that require BL1 containment are covered under this section; experiments that require BL2. BL3, or BL4 containment are covered under Section III–C–4, Experiments Involving Whole Animals.''

E. Section IV–C–1–b–(1)–(e). Responsibilities of the NIH Director

Section IV–C–1–b–(1)–(e) is proposed to be deleted.

''Section IV–C–1–b–(1)–(e). Recommendations made by the NIH Director to the FDA Commissioner regarding RAC reviewed human gene transfer experiments (see Appendix M–III–E, RAC Recommendations to the NIH Director;''

(The rest of Section IV–C–b–(1) will be renumbered.)

F. Proposed Amendments to Appendix C, Exemptions Under Section III–E–6

A new section, Appendix C–VI, is proposed to read:

''Appendix C–VI. The Purchase and Use of Transgenic Rodents''

''The purchase and use of transgenic rodents for experiments that require BL1 containment are exempt from the NIH Guidelines.''

(The old Appendix C–VI, Footnotes and References of Appendix C, will be renumbered to Appendix C–VII through Appendix C–VII–E.)

G. Proposed Amendments to Appendix M, The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into the Genome of One or More Human Subjects (Points to Consider)

The preamble of Appendix M is proposed to be amended to read:

''Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH. Researchers not covered by the NIH Guidelines are encouraged to use Appendix M.

''The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. In November 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, Splicing Life, which resulted from a two-year process of public deliberation and hearings. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded: civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies. In light of this public support, the Recombinant DNA Advisory Committee (RAC) is prepared to consider proposals for somatic cell gene transfer.

''The RAC will not at present entertain proposals for germ line alterations but will consider proposals involving somatic cell gene transfer. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into the subject's somatic cells. Germ line alteration involves a specific attempt to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

''Research proposals involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a review process involving both the NIH/ORDA and the RAC. Public review of human gene transfer protocols will serve to inform the public about the technical aspects of the proposals as well as the meaning and significance of the research. Investigators must submit human gene transfer protocols to the NIH/ORDA in the format described in Appendix M–I. Submission Requirements—Human Gene Transfer Experiments. NIH/ORDA and the RAC will evaluate the proposal regarding the necessity for RAC review.

''Factors that may contribute to the necessity for RAC review include: (I) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC review are those determined by the RAC and the NIH/ORDA not to represent possible risk to human health or the environment (see Appendix M–VII, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review). Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that NIH/ORDA and the RAC require RAC review of the submitted proposal, the documentation described in Appendix M–I. Submission Requirements—Human Gene Transfer Experiments, will be forwarded to the RAC primary reviewers for evaluation. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed. The RAC prefers that information provided in the submission documentation contains no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC conditions must be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be considered as a Major Action by the NIH Director.

''Public review of human gene transfer proposals will serve to inform the public about the technical aspects of the proposals as well as the meaning and significance of the research.

''In its evaluation of human gene transfer proposals, the RAC and NIH/ORDA will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigation, namely, to protect the health and well being of human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) Vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, Appendices M–I through M–V requests information that will enable the RAC and NIH/ORDA to assess the possibility that the proposed experiment(s) will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives).

''In recognition of the social concern that surrounds the subject of human gene transfer, the RAC and NIH/ORDA will cooperate with other groups in assessing the possible long-term consequences of the proposal and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

''Appendix M will be considered for revisions as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.''

Appendix M–I is proposed to be amended to read:

''Appendix M–I. Submission Requirements—Human Gene Transfer Proposals''

''Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, 301–496–9838 (see exemption in Appendix M–IX–A, Footnotes of Appendix M). Proposals will be submitted in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) clinical protocol (including discussion of all issues raised in Appendix M–II through

M–V); (4) Informed Consent document prepared for IRB submission (see Appendix M–III, Informed Consent); (5) letter stating that submission has been made to the IBC; (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae for each key professional person in biographical sketch format.

''**Note:** Final IBC and IRB approvals should be submitted to NIH/ORDA upon receipt of the following: (1) NIH notification of exemption from full RAC discussion, or (2) subsequent to full RAC discussion (if applicable). Human gene transfer protocols shall not be initiated prior to submission of final IBC and IRB approvals to the NIH/ORDA.''

Appendix M–VI–A is proposed to be amended to read:

''Appendix M–VI–A. Categories of Human Gene Transfer Experiments That Require RAC Review''

''Factors that may contribute to the necessity for RAC review include, but are not limited to: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Whenever possible, investigators will be notified within 15 working days following receipt of the submission whether RAC review will be required. In the event that RAC review is deemed necessary by the NIH and the RAC, the proposal will be forwarded to the RAC primary reviewers for evaluation. In order to maintain public access to information regarding human gene transfer protocols, NIH/ORDA will maintain the documentation described in Appendix M–I (including protocols that are not reviewed by the RAC).''

Appendix M–VI–B is proposed to be amended to read:

''Appendix M–VI–B. RAC Primary Reviewers' Written Comments''

''In the event that NIH/ORDA or the RAC recommends RAC review of the submitted proposal, the documentation described in Appendix M–I will be forwarded to the RAC primary reviewers for evaluation.''

Appendix M–VI–E is proposed to be amended to read:

''Appendix M–VI–E. RAC Recommendations to the NIH Director''

''The RAC will recommend approval or disapproval of the reviewed proposal to the NIH Director. In the event that a proposal is contingently approved by the RAC, the RAC prefers that the conditions be satisfactorily met before the RAC's recommendation for approval is submitted to the NIH Director. The NIH Director's decision on the submitted proposal will be considered as a Major Action by the NIH Director.''

Appendix M–VII is proposed to be amended to read:

''Appendix M–VII. Categories of Human Gene Transfer Experiments That May Be Exempt from RAC Review''

''A proposal submitted under one of the following categories may be considered exempt from RAC review unless otherwise determined by NIH/ORDA and the RAC on a case-by-case basis (see Appendix M–VI–A, Categories of Human Gene Transfer Experiments that Require RAC Review).

Note: For proposals that are exempt from RAC review, the documentation described in Appendix M–I will be maintained by NIH/ORDA for compliance with annual data reporting and adverse event reporting requirements (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols). Any subsequent modifications to proposals that were not reviewed by the RAC must be submitted to NIH/ORDA in order to facilitate data reporting requirements.''

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 4, 1997.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

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