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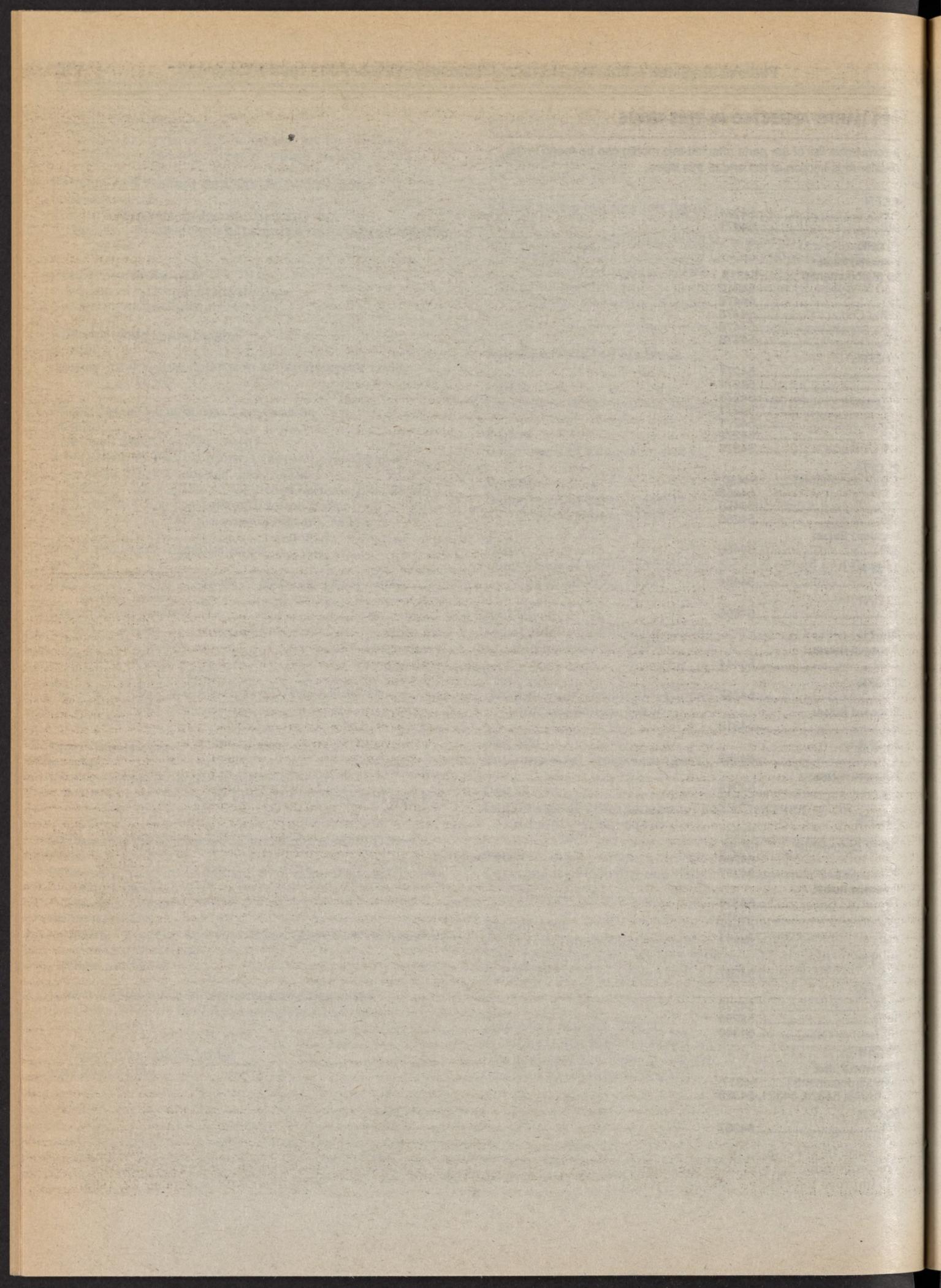
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Rules and Regulations

Federal Register

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

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Removal of the texts of recommendations and statements of the Administrative Conference.

SUMMARY: It has been the policy of the Administrative Conference of the United States to publish in the Code of Federal Regulations complete lists of its formal recommendations and statements, together with the texts of those deemed to be of continuing interest. However, for budgetary reasons the Administrative Conference is removing the texts of all recommendations and statements from parts 305 and 310 of the Code of Federal Regulations for Fiscal Year 1994. This is purely a cost-cutting measure that does not reflect any change in the Conference's views set forth in the recommendations and statements. If funding is available in future years, the Conference may again include the texts of recommendations and statements in the Code of Federal Regulations for the convenience of the public.

DATES: The removal of the texts of recommendations and statements from the Code of Federal Regulations is to be effective October 21, 1993.

FOR FURTHER INFORMATION: Renee Barnow, Information Officer (202-254-7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States is a federal agency whose mission includes making recommendations and other statements to improve the efficiency, adequacy, and

fairness of the administrative procedures used by federal agencies in carrying out administrative programs (5 U.S.C. 594(1)). Recommendations and statements of the Administrative Conference are published in full text in the Federal Register upon adoption. In addition, it has been the policy of the Conference to publish the complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, in the Code of Federal Regulations (1 CFR parts 305 and 310).

Although the Administrative Conference is removing the texts of all recommendations and statements from the Code of Federal Regulations for FY 1994, it will continue to publish the table of contents for all past Administrative Conference recommendations and statements. Copies of all recommendations and statements, and the research reports on which they are based, will continue to be available from the Office of the Chairman of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone: (202) 254-7020. Subscribers to the Code of Federal Regulations are advised to retain the 1993 edition of title 1 if they wish to maintain published copies of past Conference recommendations and statements.

For the reasons set forth in the preamble, 1 CFR Ch. III is amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 591-596.

2. Part 305 is amended by removing the titles and texts (but not the table of contents) of all sections, and any notes following those sections, and by revising the note to part 305 to read as follows:

Note: Copies of the recommendations listed in this part may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone (202) 254-7020.

PART 310—MISCELLANEOUS STATEMENTS

1. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 591-596.

2. Part 310 is amended by removing the titles and texts (but not the table of contents) of all sections, and any notes following those sections, and by adding the following note to part 310:

Note: Copies of the statements listed in this part may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037; telephone (202) 254-7020.

Dated: October 14, 1993.

William J. Olmstead,
Executive Director.

[FR Doc. 93-25820 Filed 10-20-93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 111, 122, 123, 145 and 178

[T.D. 93-85]

RIN 1515-AA50

User Fees for Customs Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth final amendments to the Customs Regulations regarding fees for certain Customs services provided for in section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. The fees, subject to certain limitations, involve arrival fees applicable to commercial vessels, commercial trucks, railroad cars, private vessels and private aircraft, passengers aboard commercial vessels and commercial aircraft, and barges and other bulk carriers from Canada or Mexico, a fee for each item of dutiable mail for which a Customs officer prepares documentation, and an annual fee for each Customs broker permit. This document replaces interim regulations to reflect current statutory requirements and provide additional clarification regarding circumstances under which the fees must be paid.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: David Kahne, Office of Inspection and Control (202-927-0159).

Accounting Aspects: John Accetturo, National Finance Center (317-298-1308).

Audit Aspects: Cynthia Covell, Office of Regulatory Audit (202-927-1100).

SUPPLEMENTARY INFORMATION:**Background**

Prior to enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 as discussed below, the Customs Service had only limited statutory authority for the collection of fees or other charges for services rendered to the public. Such fees or charges applied only in specific contexts, including the following: (1) In connection with pre-clearance of passengers and private aircraft when such services were of special benefit to particular persons; (2) in connection with the operation of Customs bonded warehouses and foreign trade zones; (3) for the entry and clearance of vessels, and the entry and delivery of merchandise carried by vessel, outside the limits of a port of entry; (4) for specific services rendered to vessels under the Customs and navigation laws (navigation fees); (5) for overtime services rendered to carriers during non-business hours; and (6) in connection with services provided at certain small user fee airports. No general legal authority existed for the collection of fees or charges for the broad range of services rendered by Customs in connection with commercial operations. These were borne by the taxpayers rather than the parties receiving the services.

Consolidated Omnibus Budget Reconciliation Act of 1985

In section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the COBRA, Public Law 99-272), Congress vested in the Secretary of the Treasury explicit authority to collect fees for providing Customs services in connection with the arrival of certain vessels, vehicles, railroad cars, aircraft, passengers and dutiable mail, and in connection with Customs broker permits. In addition, section 8101 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, amended section 13031 of the COBRA to provide for the assessment of a processing fee on entries of imported merchandise; this aspect of section 13031 of the COBRA is not the subject of this document.

The fees set forth in section 13031 of the COBRA were codified at 19 U.S.C.

58c and, as originally enacted, consisted of the following:

1. For the arrival of a commercial vessel of 100 net tons or more, \$397 (the COBRA also defined "vessel" to "not include any ferry");

2. For the arrival of a commercial truck, \$5 (the COBRA also provided in this regard that no such fee may be charged for the arrival of a commercial truck during any calendar year after a total of \$100 in fees has been paid for the provision of Customs services for all arrivals of that truck during that calendar year);

3. For the arrival of each passenger or freight railroad car, \$5 (the COBRA also provided in this regard that no such fee may be charged (a) for certain in-transit railroad cars which are part of a train that originates and terminates in the same country, and (b) as in the case of commercial trucks, once \$100 in fees have been paid on the railroad car in the same calendar year);

4. For all arrivals made during a calendar year by a private vessel or private aircraft, \$25;

5. For the arrival of each passenger aboard a commercial vessel or commercial aircraft, \$5 (the COBRA also provided in this regard that no such fee may be charged in connection with the arrival of any passenger whose journey originated in Canada, in Mexico, in a territory or possession of the United States, or in any adjacent island within the meaning of 8 U.S.C. 1101(b)(5));

6. For each item of dutiable mail for which a document is prepared by a Customs officer, \$5; and

7. For each Customs broker permit issued under 19 U.S.C. 1641(c) and held by an individual, partnership, association, or corporate Customs broker, \$125 per year.

Interim Regulations

On June 11, 1986, Customs published as T.D. 86-109, 51 FR 21152, interim amendments to the Customs Regulations to implement the fee provisions in section 13031 of the COBRA. The fees described in items 1. through 6. above were covered by new 24.22 (19 CFR 24.22), and the substance of the Customs broker permit fee was covered by new section 111.96(c) (19 CFR 111.96(c)). In addition, appropriate cross-references to the new § 24.22 provisions were inserted (1) in part 4 (19 CFR part 4) which concerns vessels in foreign and domestic trades, (2) in part 6 (19 CFR part 6) which concerns air commerce regulations and which was subsequently revised and redesignated as part 122 (19 CFR part 122), (3) in part 123 (19 CFR part 123) which concerns Customs relations with

Canada and Mexico, and (4) in part 145 (19 CFR part 145) which concerns mail importations. Although these regulatory changes were set forth as interim regulations and went into effect on July 7, 1986, in order to coincide with the effective date of the statutory provisions, the notice invited public comments on the interim regulations which would be considered before adoption of a final rule. The public comment period closed on August 11, 1986.

Tax Reform Act of 1986

Subsequent to the publication of the interim regulations, section 13031 of the COBRA was extensively amended by section 1893 of the Tax Reform Act of 1986 (the Tax Act, Public Law 99-514). The Tax Act amendments having a substantive effect on the interim regulatory provisions were as follows:

1. A new \$100 fee was added for the arrival of a barge or other bulk carrier from Canada or Mexico. In addition, for purposes of this fee the Tax Act defined "barge or other bulk carrier" as "any vessel which (A) is not self-propelled, or (B) transports fungible goods that are not packaged in any form."

2. The fee provision for arriving railroad cars was amended to refer to each railroad car "carrying passengers or commercial freight" and the fee was increased to \$7.50. Thus, the fee, as amended, would no longer apply to empty railroad cars.

3. With regard to the fee applicable to the arrival of each passenger aboard a commercial vessel or commercial aircraft, a new limitation was added which provided that no such arrival fee may be charged for any passenger "(A) who is in transit to a destination outside the customs territory of the United States, and (B) for whom customs inspection services are not provided."

4. With regard to the \$397 fee applicable to the arrival of a commercial vessel of 100 net tons or more, new limitations were added which provided that no such fee may be charged for the arrival of (a) a vessel during a calendar year after a total of \$5,955 in fees (charged either as the \$397 fee or as the \$100 fee applicable to a barge or other bulk carrier from Canada or Mexico) has been paid for the provision of Customs services for all arrivals of that vessel during that calendar year, (b) any vessel which, at the time of arrival, is being used solely as a tugboat, or (c) any barge or other bulk carrier from Canada or Mexico.

5. With regard to barges and other bulk carriers, a limitation was added which provided that no fee for the arrival of a barge or other bulk carrier

from Canada or Mexico may be charged during a calendar year after a total of \$1,500 in fees, charged either under the \$397 fee provision applicable to a commercial vessel of 100 net tons or more (for example, when the barge or other bulk carrier did not arrive from Canada or Mexico) or under the \$100 fee provision applicable to a barge or other bulk carrier from Canada or Mexico, has been paid for the provision of Customs services for all arrivals of that barge or other bulk carrier during that calendar year.

6. With regard to the fees applicable to commercial trucks, railroad cars, and private vessels, a limitation was added which provided that no such fees may be charged if the commercial truck, railroad car, or private vessel is being transported, at the time of arrival, by any vessel that is not a ferry.

7. The exemption from the arriving passenger fee was expanded to also cover passengers whose journey originated in the United States and was limited to Canada, Mexico, territories and possessions of the United States, and the identified adjacent islands.

8. An exemption from the arrival fees was added to cover "the arrival of any ferry", and the definition of "vessel" (which specifically excluded a ferry) was replaced by a definition of "ferry", *i.e.*, "any vessel which is being used (A) to provide transportation only between places that are no more than 300 miles apart, and (B) to transport only (i) passengers, or (ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods."

9. As regards the annual Customs broker permit fee, provisions were added stating that notice of the date on which payment of the fee is due shall be published in the *Federal Register* at least 60 days before the due date, that a permit may be revoked or suspended for nonpayment of the fee only if such required notice was published, and that a Customs broker license may not be revoked or suspended merely for nonpayment of the permit fee. In addition, the Tax Act provided that the permit fee payable for calendar year 1986 would be \$62.50 and that any amount paid in excess of that amount would be refunded by Customs or, at the option of the broker, credited toward the 1987 fee.

Customs and Trade Act of 1990

Section 111 of the Customs and Trade Act of 1990 (the 1990 Act, Pub. L. 101-382) amended the COBRA in two respects which bear on the interim regulatory provisions. The first amendment modified the in-transit

railroad car exemption so that its application would be based on the movement (journey) of the car rather than the train (thus, the car, rather than the arriving train of which it is a part, must originate and terminate in the same country in order for the exemption to apply). The second amendment involved the addition of a new paragraph providing that any fee under the COBRA shall be treated as a Customs duty (1) for purposes of applying the administrative and enforcement provisions of the Customs laws and regulations (including for purposes of computing penalties) except in the case of drawback or where otherwise provided in regulations, and (2) for purposes of determining the jurisdiction of any U.S. court or agency.

Additional Administrative Action

Pending analysis of the public comments received on the interim regulations, resolution of certain procedural issues, and anticipated further statutory changes, all of which necessitated a delay in adoption of the interim regulations as a final rule, and except for the changes to the annual broker permit fee provision, Customs implemented the Tax Act changes discussed above by means of directives or other instructions issued to Customs field offices and, through those offices, to the general public. The Tax Act change to the annual broker permit fee provision regarding 60-day advance publication of the due date for the fee was implemented in the Customs Regulations as a final rule on October 31, 1986, in T.D. 86-195, 51 FR 39746, which involved in this regard a revision of the text of section 111.96(c) as originally adopted on an interim basis. In addition, the two above changes to the COBRA effected by the 1990 Act were implemented on an interim basis (by revising § 24.22(d)(5) and by adding a new § 24.22(j)) on April 15, 1991, as part of T.D. 91-33, 56 FR 15036, the main purpose of which was to set forth new interim regulations implementing various changes that the 1990 Act made to the COBRA merchandise processing fee provisions; the interim regulatory provisions set forth in T.D. 91-33 were adopted as a final rule without change on December 5, 1991, as T.D. 91-95, 56 FR 63648.

Analysis of Comments

Comments were received from Members of Congress, Federal and state agencies, municipalities, trade associations, various airline, rail, vessel and commercial trucking concerns, customs brokers, private fliers and

boaters, and other members of the general traveling and importing public.

Commercial Vessels

Comment: Numerous commenters stated that the \$397 fee set forth in interim § 24.22(b) for the arrival of a commercial vessel of 100 net tons or more is burdensome, that the fee should not be assessed at other than the first port of arrival in the United States, and that a cap should be placed on the fee as it was for other fees. Some of these commenters further suggested that Great Lakes vessels should be exempted from the fee.

Customs response: The concerns reflected in these comments involve legislative policy issues that Customs cannot address in the regulatory texts where the statutory provisions do not provide a sufficient legal basis to support such regulatory changes. However, to the extent that some of these concerns were subsequently addressed by Congress in the Tax Act amendments discussed above, conforming changes to the interim regulations are appropriate.

The Tax Act provision establishing a per vessel limit of \$5,955 in fees for arrivals during a calendar year addresses the comment regarding the need for a fee cap, and § 24.22(b) has been modified as set forth below to reflect this statutory change. However, in order to ensure both collection of required fees and proper application of the calendar year limit, and in recognition of the fact that records of prior individual arrival fee payments are not maintained by Customs so as to be available for verification at each port of entry, the modified regulatory text makes application of the annual statutory limit contingent on submission to Customs of adequate proof of payment to that limit. Such proof of payment of individual arrival fees normally would consist of Customs-certified copies of receipts (Customs Form 368 or 368A) which may be obtained at the time of payment of the individual arrival fee.

In regard to the comment that the fee should be assessed only at the first port of arrival rather than "at each port of arrival" as provided in the interim regulations, the Conference Report relating to the Tax Act, after noting that the fee cap was computed on the basis of fifteen arrivals per year, specifically reflected the conferees' intent that the commercial vessel fee "be applicable to each arrival at a U.S. port regardless of whether these arrivals occur as a series of calls at U.S. ports on the same trip or on several trips." Thus, the interim regulations in this regard are consistent

with the statutory language and the legislative history relating thereto. The sentence in interim § 24.22(b) which gave rise to this comment has been redrafted as set forth below to more clearly reflect the Congressional intent.

Although the COBRA, as amended, provides no specific exemption for Great Lakes vessels, the Tax Act addition of the \$100 fee and \$1,500 annual cap for arrivals of barges or other bulk carriers from Canada has the effect of substantially reducing the fees payable by such bulk carriers over 100 net tons which operate on the Great Lakes.

A new paragraph (2) has been added to § 24.22(b) to set forth the terms of the barge or other bulk carrier fee. In order to ensure that this bulk carrier fee will be applied only in the intended context as reflected in the Tax Act Conference Report (*i.e.*, where such bulk carriers compete with trucks and rail cars arriving by land from Canada or Mexico which are subject to much lower arrival fees), this new paragraph covers only bulk carriers arriving from Canada or Mexico either in ballast (*i.e.*, empty) or transporting only cargo laden in Canada or Mexico; thus, the \$397 fee, rather than the lower bulk carrier fee, would apply to a bulk carrier of 100 net tons or more which arrives transporting any cargo laden in a country other than Canada or Mexico even if the voyage of the carrier includes a stop in Canada or Mexico immediately prior to its arrival in the United States. In addition, consistent with the treatment of the other commercial vessels as discussed above, this new paragraph both provides that the fee applies to each arrival even if a single voyage involves more than one arrival and makes application of the annual fee limit contingent on submission of proof of prior payments during the year.

It should also be noted that the two new fee limitation provisions in paragraph (b) have been drafted in such a way as to give effect to the intent reflected in the statute and the Tax Act Conference Report that, where a vessel is used in the same year both as a bulk carrier to which the \$100 fee and \$1,500 cap apply and as a vessel to which the \$397 fee and \$5,955 cap apply, (1) once a total of \$5,955 in fees has been paid on the vessel under one or both of the fee categories, no further fee (or portion thereof) would have to be paid during that year when the vessel arrives under circumstances that would normally trigger the \$397 fee and (2) once a total of \$1,500 in fees has been paid on the vessel under one or both of the fee categories, no further fee (or portion thereof) would have to be paid during

that year when the vessel arrives under circumstances that would normally trigger the \$100 fee.

Comment: Several commenters stated that the term "ferry" should be defined broadly for purposes of the statutory exemption from the \$397 commercial vessel fee.

Customs response: Section 24.22(a) as set forth below has been modified to incorporate the definition of a ferry as added by the Tax Act, and Customs has no authority to expand upon this specific statutory definition.

Even though the Tax Act amendments removed the statutory definition of "vessel" as not including any ferry (because the addition of the specific fee exemption for ferries accomplished the same purpose), the broader definition of "vessel" in § 24.22(a) has been retained because it serves to clarify the basic scope of the commercial vessel fees. However, this definition has been amended as set forth below by deleting the words "or any ferry" at the end (to avoid an inconsistency with the definition of a ferry which uses the word "vessel"), and a separate exemption provision covering ferries has been added to § 24.22(b) as set forth below.

Given the specific statutory (and corresponding regulatory) definition of "ferry", which involves the way in which the vessel is being used at the time of its arrival, Customs believes that standard statutory application requires that precedence be given to this definition in determining what arrival fee or fees should be collected. Thus, if a vessel at the time of arrival is being used in a manner consistent with the definition of a ferry, it will be treated as a ferry for purposes of the COBRA fees, with the result that (1) no arrival fee will be collected on the ferry itself and (2) arrival fees will be payable for each passenger, commercial truck and loaded or partially loaded railroad car being transported by the ferry.

Comment: Several commenters suggested that tugs and barges should be treated as one unit for purposes of assessing the commercial vessel fee.

Customs response: This comment is addressed by the Tax Act provision which added an exemption from the fee for any vessel which, at the time of arrival, is being used solely as a tugboat, and § 24.22(b) as set forth below has been amended to reflect this statutory change. It should be noted that, as stated in the Tax Act Conference Report, this exemption applies only when the tugboat is actually propelling a barge or accompanying a vessel (because the barge or vessel would be subject to an

arrival fee) and thus does not apply to a tugboat which arrives alone.

Comment: One commenter suggested that the user fees assessed at ports other than the first port of arrival be secured by a bond.

Customs response: The suggested procedure would only serve to delay collection of the fee. Moreover, the total fees due for additional port arrivals during the same voyage would have to be collected prior to departure of the vessel for a foreign port, and such a collection procedure would impose an unacceptable recordkeeping burden on Customs. Accordingly, Customs does not believe that this suggestion should be adopted.

Comment: One commenter suggested that the fee should not be charged on vessels merely taking on bunkers.

Customs response: Vessels merely taking on bunkers are not required to enter under 19 U.S.C. 1441 and 19 CFR 4.3 and thus under the interim regulations are not subject to the fee. Accordingly, no change to the interim regulations is required in this regard.

Comment: A commenter suggested that user fees should not be collected on a vessel owned by or under the complete control of the United States.

Customs response: Customs agrees. Given the specific application of the fee to a "commercial vessel" (*i.e.*, a vessel carrying passengers or goods in trade), a vessel owned or operated by or on behalf of the United States Government or a foreign government normally would not be subject to the fee. In order to clarify this point and also ensure consistency with the regulations covering vessel reporting and entry requirements, § 24.22(b) as set forth below has been modified by adding an exemption which refers to any government vessel for which no report of arrival or entry is required under § 4.5 of the Customs Regulations (19 CFR 4.5).

Commercial Trucks

Comment: A number of commenters expressed general opposition to the commercial truck processing fee based on the argument that Customs services are required by law and must be used. These commenters also complained of the resulting administrative burden placed on industries and carriers.

Customs response: These comments are directed to legislative policy issues reflected in the statute itself. Accordingly, in the absence of a change to the statutory fee structure, Customs has no legal authority to modify the implementing regulations in response to these comments.

Comment: Some commenters suggested that the 1986 \$100 yearly permit fee for commercial trucks be prorated due to its mid-year implementation, similar to the administrative decision set forth in the interim regulations notice prorating the \$25 annual fee for private aircraft and vessels to \$12.50 for 1986.

Customs response: Customs determined that it would not be appropriate to prorate the \$100 commercial truck prepaid permit fee for 1986 for the following reason: whereas the fee applicable to private aircraft and vessels is an annual or "time period" fee, the basic commercial truck processing fee is set at \$5 for each truck entry and thus is a "transaction" fee. Thus, proration due to mid-year implementation was considered inapposite in the context of the \$100 commercial truck prepaid permit fee, the function of which is only to provide the option of making a one-time payment reflecting the statutory limit on the total amount of \$5 fees payable for one truck during a single year.

Comment: Several commenters suggested allowing the accumulation of individual \$5 payments toward the issuance of a \$100 permit.

Customs response: In order to implement the \$100 annual fee cap under the COBRA with the least possible administrative burden on Customs, the interim regulations (1) included a provision allowing prepayment of the \$100 prior to the first clearance through Customs in any calendar year and (2) provided that no credit toward the \$100 annual fee would be given for \$5 individual crossing payments. Support for these regulatory provisions was found in the Conference Report pertaining to the COBRA which stated that the conferees expected Customs "to administer this fee as a one-time fee."

Customs remains of the view that the \$100 annual fee cap can and should be administered only on a one-time payment basis rather than also by cumulation of individual arrival fee payments. However, on further consideration Customs believes that there is no compelling reason for limiting the time for making the \$100 prepayment (or for affixing the decal to the truck windshield) to either prior to the beginning of the calendar year or prior to the first clearance through Customs in that calendar year.

Accordingly, § 24.22(c) as set forth below has been modified (1) to refer to the \$100 annual payment as a fee limitation but only in the context of a prepayment thereof and only if the issued decal has been affixed to the

vehicle windshield (the latter representing the only evidence that would be available to Customs at the time of an arrival to show that the \$100 annual fee has in fact been paid) and (2) to provide for such prepayment and issuance of the windshield decal at any time during the calendar year so that the exemption from individual arrival fees would apply to either the whole calendar year or any remaining portion thereof.

Comment: Many commenters questioned the propriety of collecting processing fees on empty trucks, contending that no paperwork is involved and minimal effort is expended by Customs in processing empties. It was also suggested that in-transit trucks should be exempted from the fee.

Customs response: A commercial truck was defined in the interim regulations as a "self-propelled vehicle designed and used for the transportation of commercial merchandise, or the transportation of non-commercial merchandise on a for-hire basis", and the interim text further stated that the definition included empty trucks and truck cabs without trailers. This definition clarified the intent reflected in the Conference Report pertaining to the COBRA which was to cover "self-propelled vehicles designed and used for the transportation of property." The term "self-propelled vehicle" was used for two reasons. First, in the case of tractor/trailer and similar towing situations, it ensures that the charge will be assessed on the tractor or other towing vehicle and not on the trailer or other vehicle being towed. Second, truck tractors and other towing or pulling vehicles are not the only conveyances charged: Any vehicle which can be driven (including a truck tractor arriving without a trailer) is subject to the charge. As the definition implies, the key factor in determining which vehicles will be charged is the actual or intended commercial use of the vehicle. Although the COBRA, as amended by the Tax Act, specifically provides for the assessment of the railroad car fee only on cars that are not empty, the commercial truck fee in the COBRA is not so limited. Similarly, the COBRA, as amended by the 1990 Act, contains an exemption for in-transit railroad cars but provides no such exemption for in-transit trucks. Given the clear Congressional intent reflected in the different treatment given commercial trucks and railroad cars in the statute in these regards, Customs has no latitude to provide for an exemption in the regulations for empty or in-transit trucks.

Comment: Several companies requested an exemption from the commercial truck processing fee because of their participation in joint U.S./Canadian automotive entry release procedures, where monthly filing of entries of Automotive Products Trade Agreement (APTA) products is permitted.

Customs response: Monthly filing of APTA entries generally expedites release and facilitates formal entry processing, but it does not absolve the carrier from undergoing Customs inspection of the conveyance and its contents to the extent deemed necessary by the inspector at the time of entry. In the absence of a specific exemption in the COBRA, an exemption from the commercial truck processing fee for carriers of merchandise where monthly entry filing occurs cannot be provided for in the regulations.

Comment: Driveaway truck operators suggested allowing use of a "floater" commercial truck processing fee permit for drivers since the delivery of new trucks is accomplished by driving one new vehicle for delivery to a dealership while towing the others.

Customs response: As Customs understands it, the suggested use of a "floater" permit would allow drivers to use the permit with each such delivery or, in another instance, to interchange it within a bus line having only two of its routes as commercial routes. Customs notes, however, that the \$100 commercial truck processing fee permit relates only to the commercial use of a vehicle, and the benefit of obtaining a permit arises when the same commercial vehicle has multiple arrivals during a given calendar year. Since the annual permit attaches to a specific vehicle in the same way that an individual \$5 fee is applied to the arriving vehicle, Customs has no authority to allow a transfer of a permit from one vehicle to another in order to follow a driver or correspond to a particular commercial route.

Comment: One commenter requested that Customs allow payment of the commercial truck processing fee in Canadian funds.

Customs response: Since Customs duties, taxes, and other charges are required under 19 CFR 24.1(a)(1) to be paid in U.S. funds, and in light of the amendment to the COBRA discussed above regarding the treatment of fees under the Act as Customs duties for administrative and enforcement purposes, the commercial truck processing fees must also be paid in U.S. funds.

Comment: One commenter stated that there should be provision for a more

convenient form of individual payment such as tokens, stamps or cards in order to minimize delays in producing exact change.

Customs response: Customs inspectors and cashiers routinely make change without undue delay, and we are not aware of any particular problems with delays in this specific context. Moreover, any such delays may be avoided through use of the \$100 calendar year permit which eliminates the need for individual payments.

Railroad Cars

Comment: One commenter objected to the railroad car fee on general grounds, stating that the fees will create economic hardship on the already depressed agricultural industry, will require excessive administrative collection costs, and are likely to provoke retaliation by Canada and Mexico.

Customs response: These comments involve legislative policy issues which are beyond the scope of Customs regulatory authority.

Comment: Several commenters stated that the annual \$100 fee cap should be \$50 for 1986.

Customs response: The response to the comment regarding proration of the 1986 \$100 annual fee for commercial trucks set forth above is equally applicable here.

Comment: Several commenters stated that the fee should not be charged for empty railroad cars.

Customs response: As already noted, the COBRA was amended by the Tax Act so that the fee would not apply to empty railroad cars. Accordingly, § 24.22(d) as set forth below has been amended (1) in the basic fee provision, by referring to a "loaded or partially loaded passenger or commercial freight" railroad car, and (2) by adding a fee exemption to cover railroad cars transporting only containers, bins, racks, dunnage and other equipment or materials which have been used (as distinguished from such items in unused condition which could represent a commercial importation that would trigger collection of the arrival fee) for enclosing, supporting or protecting commercial freight, which Customs believes should be treated as empty railroad cars for purposes of the arrival fee.

Comment: A number of commenters argued that the fees paid for individual railroad car crossings should be permitted to accumulate toward satisfying the \$100 annual fee cap.

Customs response: In light of the fact that the basic language in the COBRA regarding the annual fee limit for

railroad cars is identical to that used in the case of commercial trucks, and since the Conference Report language discussed above in connection with commercial trucks applies equally to railroad cars, Customs believes that cumulation toward the annual fee limit should not be permitted for railroad cars but that prepayment of the \$100 annual limit at any time during a calendar year should also be permitted in the case of railroad cars. Accordingly, § 24.22(d) as set forth below has been amended in a manner similar to the changes made to § 24.22(c) regarding commercial trucks as discussed above, the only essential difference being that in this case the prepayment will serve as a limitation on subsequent payment of individual arrival fees for a railroad car only if adequate records are maintained to enable Customs to verify that the \$100 annual fee has in fact been paid on that railroad car, in recognition of the fact that railroad car fee payments and verification of those payments (including the applicability of a \$100 prepayment to a specific railroad car) take place not at the time of arrival but rather at a time subsequent to the actual arrival.

Comment: Some commenters stated that individual carriers should be permitted to submit individual fee statements to Customs, rather than relying on their industry trade group to do so on their behalf.

Customs response: Customs has no objection to such an arrangement, and § 24.22(d) as set forth below has been modified accordingly.

Comment: A number of commenters requested that the time limit to remit payment be extended, from 60 days following the end of a month, to 60 or 90 days following a quarter.

Customs response: The suggestion by these commenters, if adopted, would significantly delay the collection of railroad car arrival fees. Given the fundamental administrative responsibility of Customs to ensure that statutorily mandated fees are collected in a timely fashion, it would not be appropriate to adopt this suggestion.

Comment: Several parties commented on payment procedures in the event a dispute arises between the AAR which calculates the fees owed and an individual carrier responsible for remitting those fees, arguing that payment should be withheld pending resolution of the dispute.

Customs response: Customs cannot agree to such an open-ended payment arrangement which could significantly delay collection of the fees. However, if the AAR and the individual carrier are unable to resolve any dispute during the

60-day time period following the close of the calendar month, a subsequent settlement of the dispute may be accounted for by means of an explanation in, and adjustment of, the next payment to Customs. Section 24.22(d) as set forth below has been amended to clarify the Customs position on this point.

Comment: Some commenters expressed confusion over the language concerning the exemption for in-transit trains. It was pointed out in this regard that the word "train" is too imprecise because a train is nothing more than the linkage of individual cars, and it was suggested that reference be made to "the country being transited" rather than "the United States".

Customs response: These points were resolved by the change to the in-transit exemption effected by the 1990 Act which was implemented by Customs in T.D. 91-33, as discussed above.

Comment: One commenter suggested that "railroad car" should be specifically defined in the regulations as a carrying vehicle measured from coupler to coupler.

Customs response: Customs agrees that such a definition would be useful, particularly in order to ensure that articulated cars are treated as one car. Accordingly, a definition of "railroad car" has been included in § 24.22(d) as set forth below.

Comment: One commenter stated that the regulations should provide a drawback, refund or allowance procedure for railroad cars that are received in error by a carrier and returned to the United States.

Customs response: Customs believes that such occurrences would most often involve empty cars, in which case no fee would apply as a result of the amendment to the railroad car fee provision effected by the Tax Act as discussed above. However, the fee would still apply in the case of such cars which are loaded or partially loaded, and Customs has no legal authority to provide otherwise in the regulations in the absence of supporting statutory language. It should be noted that such cars must still be cleared by Customs.

Comment: Two commenters suggested that the railroad company bringing a car into the United States and clearing it through Customs should be the party responsible for the fee payment, not another company receiving the car in interchange at the port of entry.

Customs response: Customs believes that the provisions regarding responsibility for fee payments as set forth in the interim regulations should be retained because they have provided

Customs with a workable method for identifying the party to which Customs will look for payment of the fees. However, so long as the actual payment to Customs is made by that party, there is nothing to prevent the two railroad companies from making their own private arrangements regarding reimbursement or allocation of the costs between them.

Comment: One commenter urged that the in-transit exemption provision be expanded to include in-transit cars which are set out (taken off line) for repairs outside the United States and then brought back on line, provided no cargo is loaded on or unloaded from the car.

Customs response: Customs agrees that the in-transit exemption remains applicable to such cars and, accordingly, § 24.22(d) as set forth below has been amended to clarify this point.

Private Vessels and Aircraft

Comment: Numerous commenters objected to the annual \$25 fee for private vessels and aircraft on general grounds, stating that the assessment is unfair and discriminatory because automobiles entering the United States are not charged, that general taxes rather than user fees should be used to fund Customs operations, and that the private vessel fee will adversely affect business or trade and tourism in Canada.

Customs response: These comments relate to legislative policy issues that are beyond the scope of the regulations.

Comment: An association representing private vessel owners suggested the following:

1. Authorize procurement of a re-entry permit by mail order, in advance of departure to a foreign country.
2. Issue an identification permit number for the calendar year.
3. Allow permit number clearance by telephone whenever pleasure craft have nothing to clear through Customs.
4. Allow renewal of the permit number and fee, as well as pre-payment by mail for the following year, during the last 30 days of the current year.

Customs response: Section 24.22(e) presently states that the \$25 fee may be prepaid to Customs, and Customs has instituted procedures for the advance issuance of decals either through local Customs offices or by mail, with the decal to be placed on the private vessel (or aircraft) as evidence that the fee has been paid for the calendar year in question. Accordingly, the first, second and fourth suggestions above have already been implemented by Customs, and § 24.22(e) as set forth below has

been modified to reflect the current applicable procedures.

As regards the third suggestion, Customs currently permits telephonic report of arrival and clearance of private vessels in many districts, and such telephonic clearance normally includes verification of payment of the \$25 annual fee. However, because special reporting and clearance requirements may apply in certain circumstances (see, for example, 19 CFR 4.2a), it would not be appropriate to provide for telephonic decal number clearance in these regulations.

Comment: One commenter stated that the annual \$25 fee was reasonable but objected to the \$25 overtime amount for Sunday inspection services. This commenter suggested that Customs should stagger shifts during the week in order to provide free Sunday service.

Customs response: Pursuant to the decision of the Supreme Court in *U.S. v. Myers*, 320 U.S. 561 (1944), Customs inspectors must be paid overtime compensation for Sunday work without regard to whether the services are in addition to a regular weekly tour of duty. Therefore, staggered shifts would not alleviate the situation. However, Customs notes that section 8101(c)(1) of the Omnibus Budget Reconciliation Act of 1986 amended section 13031 of the COBRA so as to reinstate free overtime service for private aircraft on Sundays and holidays between the hours of 8 a.m. and 5 p.m. local time, thus addressing the substance of this commenter's objection as regards private aircraft but not as regards private vessels. In the absence of an appropriate statutory amendment similar to that made for private aircraft, Customs has no authority to eliminate overtime payments for Customs services provided in connection with private vessels. Section 24.22(e) as set forth below has been modified to clarify the overtime exception as regards private aircraft.

Comment: In order to exempt private vessels which are entered in regattas, one commenter made the following suggestions:

1. Exempt all pleasure craft not carrying merchandise regardless of size;
2. Exempt all participants in competitive events where the returning craft are not carrying merchandise; or
3. Extend the vessel length exemption from 30 feet to 65.6 feet (20 meters).

Customs response: The specific exemption for private pleasure vessels of less than 30 feet in length not carrying goods required to be declared was included in § 24.22(e) based on a statement of intent and regulatory mandate contained in the Conference Report relating to the COBRA (which

noted in this regard that Customs incurs no processing costs in clearing such vessels). Customs has no authority to extend an exemption to other classes of vessels in the absence of support therefor in the statutory language and the legislative history relating thereto.

Dutiable Mail Entries

Comment: Two commenters requested that the regulations be revised to make it clear that the \$5 processing fee is to be collected only when Customs prepares the entry documentation. Thus, when a customs broker prepares formal or informal entry documents, no fee would be assessed.

Customs response: Customs notes that the statute refers to "each item of dutiable mail for which a document is prepared by a customs officer" (emphasis added). Moreover, even though almost all dutiable formal mail entries are prepared by brokers, Customs in such cases still may have to prepare notices of arrival or other documentation in connection with the arrival, entry and clearance of the mail shipment. Accordingly, it would be inappropriate to refer only to "entry" documentation in § 24.22(f) or to otherwise limit the application of this regulatory provision which is in accord with the language and intent of the statute.

Comment: One commenter suggested exempting packages valued at less than \$250 or reducing the amount of the fee because of the economic hardship the fee presents to small businesses.

Customs response: Since these suggestions involve legislative policy issues and are not supported by the statutory language, Customs has no authority to include such provisions in the regulations.

Commercial Vessel and Aircraft Passengers

Comment: Two commenters objected to the fee as a matter of principle. One commenter argued that the costs for services provided by Customs to arriving passengers should be covered out of general revenues. The other commenter argued that the fee is unfair because no other countries assess such a fee.

Customs response: These comments involve legislative policy issues implicitly reflected in the statute itself. Accordingly, Customs has no authority to address the comments in the regulatory texts.

Comment: One commenter stated that the exemption for transiting passengers should apply to all in-transit passengers rather than to only those not processed by Customs. This commenter

specifically suggested that the regulations be amended to refer simply to persons transiting the United States who stop over "for less than 24 hours prior to continuing on a journey to a foreign country".

Customs response: The regulatory provision in question was included in the interim regulations on the reasoning that the arrival fee is intended to apply only in cases where Customs actually processes the passenger, and the exemption for in-transit passengers added by the Tax Act, as discussed above, explicitly recognized this principle by referring to a passenger "for whom customs inspectional services are not provided." Accordingly, the suggestion of this commenter is inconsistent with the statutory language and thus cannot be adopted. Section 24.22(g) as set forth below has been modified in this regard to reflect more accurately the statutory language.

Comment: Two commenters stated that the exemption for in-transit passengers should not be limited to airline passengers but rather should also apply to cruise ship passengers who are transiting the United States on route to another country.

Customs response: Neither the statute nor the regulations limit applicability of the in-transit exemption to airline passengers. Thus, in principle, it is equally applicable to cruise ship and other commercial vessel passengers. However, the exemption will apply in either case only if the passenger is in-transit to a location outside the Customs territory of the United States and is not processed by Customs during the layover (in-transit) period. As a practical matter, the exemption is applied more frequently in the case of airline passengers who often disembark and are held in a sterile, supervised in-transit lounge, without undergoing any Customs inspection, until their continuing or connecting flight is ready to leave. Unless in-transit vessel passengers who disembark similarly remain in such a secure in-transit area so as to not require Customs processing, they will not be entitled to the exemption.

Comment: One commenter requested a list of airports which have sterile in-transit areas where passengers may remain and thus be covered by the in-transit exemption.

Customs response: A list of airports at which sterile in-transit lounges are maintained is set forth in a brochure entitled Travel Industry Tips (Publication No. 529) which Customs has published and made available to the public to explain the collection process for Federal inspection fees. Copies of

this brochure may be obtained by writing to: U.S. Customs Service, P.O. Box 7407, Washington, DC 20044.

Comment: One commenter requested that the regulations include examples in order to address specific problems that arise when complex travel arrangements are involved (for example, when multiple layovers and arrivals in the United States occur on the same itinerary).

Customs response: Customs does not believe that the regulations are the proper place for such examples, given the legally binding nature of the regulations and the impossibility of anticipating the myriad of specific factual patterns that would have to be covered in order for the examples to be complete and sufficiently informative. However, examples of specific travel situations have been included in the Travel Industry Tips brochure mentioned above.

Comment: A commenter requested that an explicit statement be included in the regulations to the effect that arriving passengers who are exempt from application of the fee are also exempt from charges for inspectional services.

Customs response: The passenger arrival fee is specifically intended to cover Customs costs in providing inspectional services to passengers, and there are no other Customs charges for such services which apply specifically to commercial passengers. Accordingly, the suggested statement is neither necessary nor appropriate.

Comment: With reference to the exemption concerning persons whose journey originates in Canada, Mexico, a U.S. territory or possession, or any adjacent island, one commenter suggested that no fee should be charged if a passenger stops for layover in one of those locations even if the journey originated outside one of those locations.

Customs response: The statutory provision regarding the cited exempt locations is strictly limited to a journey which either originated in one of those locations or originated in the United States and was limited to those locations. Thus, there is no legal basis for the suggested broad fee exemption based merely on a layover in one of the exempt locations.

Section 24.22(g) as set forth below has been modified by revising paragraph (2)(i) to reflect the Tax Act addition of the exemption for a journey which originated in the United States and was limited to the exempt locations. In addition, in order to reflect the basic Customs position set forth in Headquarters Ruling Letters 112511 and 112554 regarding the applicability of the

two fee exemptions in that paragraph, the following additional changes have been made to § 24.22(g) as set forth below: (1) A new paragraph (B) has been added to paragraph (2)(i) to clarify what constitutes a journey and its origination point; (2) in the first sentence of paragraph (3) concerning fee collection procedures, the words "for transportation into the customs territory of the United States" have been added to clarify the context in which ticket or travel document issuance triggers collection of the arrival fee; and (3) interim paragraph 3(ii), which does not reflect the current Customs position, has been replaced by a new text setting forth an example in which the arrival fee is collected because the journey did not meet all conditions for exemption under the provision added by the Tax Act.

Comment: One commenter stated that United Nations officials should be accorded the same exemption from the fee as persons who have full diplomatic status.

Customs response: The exemption for diplomats was included in the interim regulations because the Conference Report pertaining to the COBRA stated that the conferees agreed that the fee should not apply to "diplomats entering the United States." Customs believes that the conferees intended to exempt from the fee those officials and other personnel of foreign governments and international organizations (including the United Nations) who may be exempt from normal Customs clearance procedures and requirements under subchapter VI of chapter 98 of the Harmonized Tariff Schedule of the United States and as provided in part 148 of the Customs Regulations (19 CFR part 148). Customs further notes that diplomatic status for purposes of United States law is dependent on the issuance of the appropriate visa by the U.S. Department of State and is not controlled by the issuance of a passport or other identifying document by a foreign government. In order to ensure that the fee exemption for diplomats clearly reflects the intent and can be easily and consistently applied, § 24.22(g)(2)(iii) as set forth below has been modified so that the exemption will be applied with reference to specific classes of visas issued by the Department of State.

Comment: A commenter took issue with the requirement that commercial air carriers collect the fee since it is the passenger who is liable for paying the fee, and this commenter argued that the regulations should absolve carriers from responsibility for collecting the fee when the passenger refuses to pay it. This same commenter suggested that the

word "collected" should be changed to read "assessed" in interim § 24.22(g)(3).

Customs response: With regard to the first point, the statute sets forth the general rule that the fee shall be collected from the passenger by the person who issues a transportation document or ticket and that such collection shall take place when the document or ticket is issued. Given this statutory specificity, Customs cannot amend the regulations as this commenter suggests, and Customs further notes that when a passenger refuses to pay the fee, the carrier can solve the collection responsibility problem by simply declining to issue the document or ticket to that passenger. As regards the second point, since both the regulatory provision in question and the statutory provision on which it is based specifically concern the collection procedure (it is the statute itself which "assesses" the fee), it would not be appropriate to use the word "assessed" in the regulatory provision.

Comment: One commenter suggested that responsibility for collecting the fee should rest with the carrier which actually transports the passenger rather than the carrier which issued the ticket.

Customs response: Customs would also prefer to have responsibility for collection rest with the transporting carrier as this would greatly facilitate verification of required fee payments. However, given the specificity of the statute in this regard, in the absence of an appropriate statutory amendment Customs has no authority to amend the regulations to reflect this commenter's suggestion.

Comment: Two commenters argued that charter airlines should be responsible for the remittance of fees collected by tour operators, and they further suggested in this regard that the regulations be amended to require that tour operators remit the collected fees to the charter operators for this purpose.

Customs response: The statute states that the person "who collects" the passenger fees shall remit those fees to the Government. Since under the statute collection of the fees normally takes place when the transportation document or ticket is issued (in this case, by the tour operator), Customs has no authority to amend the regulations as suggested by these commenters.

Comment: Two commenters suggested that, in the case of charter operations, verification of fee payments should be based on the passenger manifest rather than on the tickets issued; under this procedure, tour operators would advise the carriers in writing via the manifests of the number of passengers who paid the fee. The same commenters also

stated that the flight manifest should be used as the travel document for purposes of determining when remittance of the fees is due, because most charter airlines use the flight manifest in order to determine when a charter will leave and how many passengers are booked.

Customs response: In view of the specific statutory requirements regarding when and by whom the fees are to be collected and remitted, and in consideration of the fact that the intent of Congress was that the passenger (who is the recipient of the Customs inspection services) pay the fee, the flight manifest cannot be used in the manner suggested by these commenters.

Comment: One commenter stated that commercial air carriers prefer to have the option of collecting the fee in lieu of collection by U.S.-based tour wholesalers who contract for passenger space.

Customs response: To the extent that the tour wholesalers issue the tickets (and thus under the statute are required to collect the fee), Customs has no authority to provide in the regulations for collection of the fee by the carrier.

Comment: One commenter criticized the requirement that carriers collecting the fee at a departure airport must issue a receipt to the passenger, stating that carriers should be allowed to issue a stamp similar to "U.S. Transportation Tax" in lieu of a receipt. Another commenter stated that the regulations should specify the types of receipts that are permissible.

Customs response: The regulatory requirement of issuance of a receipt to a passenger applies only when the fee is collected from the passenger at the time of departure from the United States due to a failure to collect the fee at the time of issuance of the ticket at an overseas location; the regulation reflects a specific statutory requirement and thus cannot refer to the issuance of anything other than a "receipt" as provided in the statute. Customs does not believe that it would be appropriate to specify in the regulations what type of "receipt" would be permissible because the party collecting the fee should have sufficient flexibility to adopt a procedure that is compatible with its particular operational requirements and procedures.

On a related point, Customs notes that the COBRA requires that the fee be separately identified on the document or ticket as a "Federal inspection fee", whereas interim § 24.22(g)(4) merely required that the ticket or travel document be "marked to indicate that the required fee has been collected from the passenger." The regulatory text as

set forth below (and renumbered as § 24.22(g)(3) as discussed below) has been modified to conform to the statutory requirement but with reference to Federal inspection "fees" in order that other Federal agency inspection fees may be included as necessary.

Comment: With regard to the basic requirement that the carrier issuing the ticket or travel document is responsible for collecting the fee, one commenter stated that carriers should also be able to collect the fee on prepaid tickets or travel documents (in order to avoid, for example, having to collect the fee from a minor with a prepaid ticket).

Customs response: This commenter correctly notes that there may be a distinction between the time at which a passenger actually takes physical possession of a ticket and the time at which payment for the ticket is effected. However, this should not present a problem even in the case of prepaid tickets, provided it is understood that ticket "issuance" includes the act of preparing the ticket by the carrier, because the carrier can (and should) ensure collection of the fee by including the fee among the charges reflected on the ticket and paid by the ticket purchaser.

Comment: In consideration of the fact that refunds of collected fees will sometimes be necessary, one commenter requested that a procedure be implemented to allow airlines to adjust the remitted amount from quarter to quarter.

Customs response: Customs agrees that, if an explanation is provided with the payment, adjustments of previously remitted fees may be reflected in the next quarterly payment to Customs. Section 24.22(g) as set forth below has been modified accordingly.

Comment: In cases involving split charters whereby several tour operators charter space on one aircraft, one commenter suggested that the tour operator who contracts with the passengers, rather than the carrier, is in the best position to collect and remit the fees to Customs.

Customs response: If the tour operator issues the ticket or other travel document, the statute requires that the tour operator collect and remit the fees to Customs.

Although the last sentence of interim § 24.22(g)(4) clarified the responsibilities of U.S.-based tour wholesalers who issue non-carrier tickets, Customs notes that the first sentence of that section (which set forth the basic fee collection requirement) only referred to "carriers". Accordingly, the first sentence of interim § 24.22(g)(4) has been modified to refer to "each air

or sea carrier, travel agent, tour wholesaler, or other party" issuing a ticket or travel document in order to clarify the statutorily-mandated responsibility, and corresponding changes also have been made to the texts of interim § 24.22(g) (5) and (7) which are a direct consequence of the collection requirement. In addition, the first sentence of interim § 24.22(g)(4) has been further modified by removing the words "on or after July 7, 1986," which were included only because the interim regulations were published prior to the effective date of the statutory fees. Finally, the texts of interim § 24.22(g) (3) and (4) have been combined into one § 24.22(g)(3) covering all fee collection procedures, with a consequential renumbering of the succeeding paragraphs under § 24.22(g).

Comment: One commenter expressed concern that the required accounting and operating procedures to be followed by clerks and attendants in collecting and verifying the fees will be viewed by passengers as a reduction in the quality of service. This commenter also complained that the general records maintenance requirement will increase expenses by necessitating additional staff.

Customs response: Notwithstanding the perceived or actual effect which these requirements may have, they are central and thus necessary to the proper administration of the statutory fee provisions. Accordingly, there is no practical means for addressing these concerns in the regulations.

Comment: One commenter suggested that when fees are collected in a foreign country, they should be collected in the local currency using the exchange rate applicable on the date of collection and, for purposes of remittance to Customs, the fees so collected should be converted to U.S. dollars using the exchange rate in effect on the date of remittance.

Customs response: Customs currently allows for the procedure suggested by this commenter. The Customs position on this point is also reflected in the Travel Industry Tips brochure mentioned above.

Comment: One commenter requested that the second sentence of interim § 24.22(g)(7) be modified to require retention of records for 2 years after "fee collection" rather than "fee calculation".

Customs response: Customs cannot agree to this request. Given the fact that payments and statements are submitted to Customs only quarterly (and may be submitted as late as 31 days after the close of the quarter), the effect of this proposed change would be to

significantly shorten the record retention period with regard to those fees collected in the early part of the subject quarter. In order to ensure that Customs is able to perform a timely and accurate verification of payments, the records retention period must cover both the calculation itself and all the collection records upon which the calculation was based.

Comment: One commenter requested that the regulations specify the types of records that are to be maintained.

Customs response: Customs agrees in principle that it would be useful to clarify in the regulations the types of records or information that should be maintained to enable Customs to verify that the fees have been properly collected and remitted. However, Customs believes that this document is not the proper vehicle for such action, which could have the effect of imposing new substantive requirements on the public and thus should be the subject of further public comment procedures.

Comment: One commenter suggested that the deadline for quarterly payment and statement filing (31 days after the close of the calendar quarter) be extended by 60 days to avoid the need for estimates and ensure remittance of the correct amount.

Customs response: The deadline set forth in the regulations reflects a requirement in the statute and thus must be retained. Moreover, Customs believes that the addition of a provision allowing reconciliation of quarterly payments in the following quarter, as discussed above, will address the main concerns of this commenter.

Comment: One commenter pointed out that charter airlines already file quarterly reports with the U.S. Department of Transportation (DOT) and suggested that Customs review those quarterly reports to see if they would be sufficient for Customs purposes.

Customs response: Although information filed with the DOT may be useful to Customs for fee verification purposes in some circumstances, it would not be sufficient in and of itself because it only reflects passengers transported by carriers and thus would not provide complete information regarding fee collection which is based on ticket issuance rather than passenger arrivals.

Comment: Three commenters raised issues regarding the provision of adequate services to passengers as required by the COBRA, which was not addressed in the interim regulations. One commenter stated that a system should be implemented allowing airlines to notify Customs of intended

arrival and that there should be some assurance regarding adequacy of personnel to clear passengers so that no passenger is required to wait in line for more than 20 minutes. Another commenter requested that Customs specify how adequacy of service will be assured and suggested that a telephone number be provided for purposes of reporting bad service. The third commenter requested inclusion of language in the regulations stating that charter airline passengers are entitled to the same service, and at no additional cost, as in the case of scheduled airline passengers because charter airlines also operate on a schedule.

Customs response: As regards notification of arrival, Part 122 of the Customs Regulations contains detailed provisions regarding the applicable procedures. With respect to the issue of adequacy and cost of service provided by Customs, it is noted that the COBRA was extensively amended in this regard by section 8101(c) of the Omnibus Budget Reconciliation Act of 1986, by section 1893(d) of the Tax Act, and by section 9501(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Those amendments expanded the scope of the services that must be adequately provided, included specific factors to be taken into account in determining whether service is adequately provided, and expanded the list of services for which only fees under the COBRA may be charged. Consistent with the statutory mandate, the policy of Customs is to provide the most efficient and responsive service possible to all carriers (whether regularly scheduled or charter) and passengers, and included in this policy is a goal of processing all passengers within 20 minutes or less. Because most delays or other inspectional or clearance problems result from conditions arising at the local level, Customs suggests that any complaints be directed to the regional commissioner or district director of Customs having jurisdiction over the location where the flight was processed. As regards inclusion of adequate service standards in the regulations, Customs believes that this final rule document is not the proper vehicle for such proposals.

Customs Brokers

One commenter made a number of points on behalf of brokers nationwide with regard to the permit fee.

Comment: The commenter stated that confusing instructions were issued to Customs personnel concerning the permit fee, in particular regarding its applicability to inactive brokers, and to

individually-licensed brokers employed by a corporate broker.

Customs response: When these problems were brought to the attention of Customs Headquarters, additional clarifying instructions were issued to all Customs field offices.

Comment: The commenter stated that the automatic permit revocation procedure set forth in section 111.96 of the interim regulations for failure to timely pay the fee, by not allowing a reasonable opportunity to cure the default, amounts to a denial of due process.

Customs response: Even though the interim regulations were published on June 11, 1986, and went into effect on July 7, 1986, Customs gave brokers an additional grace period, until August 6, 1986, to pay the annual permit fee for 1986. Moreover, Customs exercised a policy of leniency as regarded payment of the 1986 fee in order to avoid precipitous revocation of permits for failure to timely pay the fee. Thus, brokers were given ample notice and opportunity to pay the 1986 fee and thus retain their permits.

On the broader issue of due process, Customs would point out that since the Tax Act amendments discussed above explicitly ratified the regulatory principle of permit revocation for failure to timely pay the fee, provided appropriate notice of the due date has been published in the *Federal Register*, the issue of due process is essentially moot from a regulatory standpoint.

Comment: This commenter argued that the permit fee for 1986 should be reduced to one-half the full-year amount due to its mid-year implementation.

Customs response: This issue was resolved in the Tax Act as discussed above.

Comment: The commenter stated that an actual permit document should be made available to each broker.

Customs response: Such documents were issued to all Customs districts for immediate use in December 1986.

Additional Changes to the Regulations

In addition to the changes to the interim regulatory texts discussed above, the final regulations as set forth below incorporate (1) a number of non-substantive, editorial (organizational or drafting) changes to improve the clarity and readability of the regulations and (2) some necessary substantive changes involving subsequent statutory amendments and other matters not specifically discussed above in connection with the public comments. The principal editorial changes and additional substantive changes are described below.

Section 24.22

Paragraph (a) has been limited to definitions that apply to more than one of the other paragraphs under the section. Those definitions which pertain to only one such paragraph appear as part of the substantive fee provision.

Where applicable, separate subparagraphs have been included to cover annual fee limitations for individual arrival fees, prepayment of fees, and fee exceptions where more than one category of exemption applies to the fee in question. Each prepayment subparagraph reflects current payment procedures, including procedures for lump sum mid-year payment of both annual fees and any remaining balance where a calendar year limit applies to an individual arrival fee. Fee exceptions have been added to cover the Tax Act addition of exemptions for commercial trucks, railroad cars and private vessels transported by any vessel other than a ferry.

With regard to the commercial passenger arrival fee, the fee exemption covering crew members and persons directly connected with the operation, navigation, ownership, or business of the vessel or aircraft has been modified to reflect the longstanding Customs position, as stated in the Travel Industry Tips brochure mentioned above, that the exemption applies only to official business travel and not to travel for pleasure. In addition, the following changes have been made to the paragraph covering payment and quarterly statement procedures (paragraph (g)(4) as set forth below): (1) In order to more clearly reflect the necessary correlation between the statutory obligation to collect the fees and the consequent statutory obligation to remit those fees to Customs, reference is made to payment to Customs of the fees "required to be" collected (thus, the amount remitted must be equal to the amount of fees required to be collected under the statute, even if some required fees were in fact not collected); and (2) the provision regarding fee payment responsibility where the (foreign) ticket or travel document issuer has not collected the fee has been changed to more closely align on the wording of the statute and paragraph (g)(3). Finally, the paragraph concerning the limitation on charges (paragraph (g)(7) as set forth below) has been redrafted to more accurately reflect the terms of the statutory provision on which it is based (19 U.S.C. 58c(e)(1)), in particular to cover the exception regarding reimbursement for costs incurred by Customs in connection with user fee airports, and the references in this

paragraph to provisions within part 6 have been changed to reflect the replacement of part 6 by part 122 as further discussed below.

The payment procedures applicable under paragraph (i)(1) have been clarified by insertion of a cross-reference to § 24.1 (which concerns general collection requirements and procedures that are equally applicable to the fees under § 24.22) and by inclusion of the identifying payment class codes (subsequently implemented by Customs for accounting and reporting purposes) to be referenced on a check or money order payment.

Part 111

In order to ensure applicability of the proper procedures, the second sentence of section 111.96(c) has been amended by inserting a cross-reference to the remittance procedures set forth in § 24.22(i). In addition, the third sentence of § 111.96(c) has been redrafted (1) to clarify the intended effect of the sentence, *i.e.* that no proration of a mid-year fee payment will be allowed, and (2) to include a reference to a permit application under section 111.19(b) in order to ensure procedural consistency between that section and § 111.96(c).

Part 122

As noted above, Part 6 concerning air commerce regulations was revised and redesignated as part 122 following publication of the interim regulations implementing the COBRA (which included a new section 6.1a setting forth a cross-reference to the interim § 24.22 fees as regards private aircraft and passengers aboard commercial aircraft). The final texts of part 122 were adopted on April 21, 1988, as T.D. 88-12, 55 FR 9285.

It is further noted, however, that no direct counterpart to interim section 6.1a was included in the final texts of part 122. Moreover, present § 122.29, which concerns overtime services for private aircraft, is incorrect in referring in this context to overtime charges which no longer apply to private aircraft as discussed above. In addition, there is no need for a cross-reference to passenger fees which apply only in regard to commercial aircraft. In order to address these issues, § 122.29 has been revised (1) to set forth a cross-reference to § 24.22 as regards the private aircraft arrival fee and (2) to set forth a cross-reference to § 24.16 only with regard to the procedures for requesting overtime services.

Part 123

The interim texts implementing the COBRA included a new § 123.1a which referred to § 24.22 as regards fees applicable to commercial trucks, truck cabs, and railroad cars whether empty or otherwise. Customs now believes that it would be preferable to remove this section, which represents an exception to normal regulatory numbering rules, and to include an appropriate cross-reference to the § 24.22 fees in § 123.0 which describes the overall scope of part 123 and which already contains cross-references to part 122 as regards aircraft and to part 4 as concerns vessels. Accordingly, a new sentence, with a simplified text, has been added at the end of § 123.0 for this purpose.

Part 145

For the same reasons stated above in regard to part 123, interim § 145.1a has been removed and a new sentence containing a cross-reference to the § 24.22 dutiable mail fee has been added to § 145.0 which concerns the scope of part 145.

Part 178

The changes to part 178 involve removing from section 178.2 the listings for §§ 4.98(i), 123.1a and 145.1a, which either are simply cross-reference provisions containing no substantive requirements or have been replaced in this document by cross-reference provisions as discussed above.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the statutory changes and additional considerations discussed above, Customs believes that the interim regulations published as T.D. 86-109 should be adopted as a final rule with certain changes thereto as discussed above and set forth below.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations concern the collection of fees that are mandated by statute, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), 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.

Paperwork Reduction Act

The collection of information in these final regulations, contained in § 24.22, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515-0154. The estimated average annual burden associated with this collection is .25 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects**19 CFR Part 4**

Customs duties and inspection, Maritime carriers, Cargo vessels, Passenger vessels, Yachts.

19 CFR Part 24

Customs duties and inspection, Accounting, Claims, Taxes, Wages, User fees.

19 CFR Part 111

Customs duties and inspection, Imports, Administrative practice and procedure, Brokers.

19 CFR Part 122

Customs duties and inspection, Imports, Air carriers, Air transportation, Aircraft, Airports.

19 CFR Part 123

Customs duties and inspection, Canada, Mexico, Motor carriers, Railroads, Vessels.

19 CFR Part 145

Customs duties and inspection, Postal service.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Parts 4, 24, 111, 122, 123, 145 and 178, Customs Regulations (19 CFR Parts 4, 24, 111, 122, 123, 145 and 178), are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.98 also issued under 31 U.S.C. 9701;

* * * * *

2. Section 4.98(i) is revised to read as follows:

§ 4.98 Navigation fees.

* * * * *

(i) Private and commercial vessels, and passengers aboard commercial vessels, may be subject to the payment of fees for services provided in connection with their arrival as set forth in § 24.22 of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a-58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

* * * * *

2. The authority citation for section 24.23 is removed.

3. Section 24.22 is revised to read as follows:

§ 24.22 Fees for certain services.

(a) *Definitions.* For purposes of this section:

(1) The term *vessel* includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water but does not include any aircraft.

(2) The term *arrival* means arrival at a port of entry in the customs territory of the United States or at any place serviced by any such port of entry.

(3) The expression *calendar year* means the period from January 1 to December 31 of any particular year.

(4) The term *ferry* means any vessel which is being used to provide transportation only between places that are no more than 300 miles apart and which is being used to transport only:

- (i) Passengers, and/or
- (ii) Vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(b) Fee for arrival of certain commercial vessels.**(1) Vessels of 100 net tons or more.**

(i) *Fee.* Except as provided in paragraphs (b)(2) and (b)(4) of this section, a processing fee in the amount of \$397 shall be tendered by the master, licensed deck officer, or purser upon arrival of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this chapter or upon arrival of any U.S.-flag vessel of 100 net tons or more proceeding coastwise under § 4.85 of this chapter. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(1)(i) of this section for the arrival of a vessel during any calendar year after a total of \$5,955 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(2) Barges and other bulk carriers from Canada or Mexico.

(i) *Fee.* A processing fee of \$100 shall be tendered upon arrival of any barge or other bulk carrier which arrives from Canada or Mexico either in ballast or transporting only cargo laden in Canada or Mexico. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage. For purposes of this paragraph, the term "barge or other bulk carrier" means any vessel, other than a ferry, which is not self-propelled or which transports fungible goods that are not packaged in any form.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(2)(i) of this section for the arrival of a barge or other bulk carrier during any calendar year after a total of \$1,500 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(3) *Prepayment.* The vessel operator, owner or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section or any remaining portion thereof if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment may be made at a Customs district or port office or may be mailed to: U.S. Customs Service, National Finance Center, P.O. Box 68907, Indianapolis, Indiana 46268. In a case involving prepayment of the remaining portion of a maximum

calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year shall accompany the payment. Where prepayment is made by mail, the payment shall be accompanied by a letter which sets forth the name of the vessel covered by the payment, the calendar year to which the payment applies, a return address, and any other information required under paragraph (i)(1) of this section.

(4) *Exceptions.* The following vessels are exempt from payment of the fees specified in paragraphs (b)(1) and (b)(2) of this section:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas and returning to the same U.S. port without having touched any foreign port or place, even though formal entry is still required;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Any government vessel for which no report of arrival or entry is required as provided in § 4.5 of this chapter; and

(iv) A ferry.

(c) Fee for arrival of a commercial truck.

(1) *Fee.* The driver or other person in charge of a commercial truck shall, upon arrival, proceed to Customs and tender the sum of \$5 for the services provided. The fee shall not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term "commercial truck" means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

(2) *Fee limitation.* No fee shall be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of \$100 has been made and a decal has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

(3) *Prepayment.* The owner, agent or person in charge of a commercial truck may at any time prepay a fee of \$100 to cover all arrivals of such commercial truck during a calendar year or any remaining portion of a calendar year. Prepayment may be made at a Customs district or port office or by mail in accordance with paragraph (i)(1) of this section, and each prepayment shall be accompanied by a properly completed Customs Form 339, Annual User Fee Decal Request. Once the prepayment

has been made under this paragraph, a decal will be issued for placement in the lower left hand corner of the vehicle windshield to show that the vehicle is exempt from payment of the fee for an individual arrival during the applicable calendar year or any remaining portion thereof.

(d) Fee for arrival of a railroad car.

(1) *Fee.* Except as provided in paragraph (d)(6) of this section, a fee of \$7.50 shall be charged for the arrival of each loaded or partially loaded passenger or commercial freight railroad car. The railroad company receiving a railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States, shall be responsible for payment of the fee. Payment of the fee shall be made in accordance with the procedures set forth in paragraph (d)(3) or (d)(4) of this section. For purposes of this paragraph, the term "railroad car" means any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a cabooses.

(2) *Fee limitation.* No fee shall be collected under paragraph (d)(1) of this section for the arrival of a railroad car during any calendar year once a prepayment of \$100 has been made as provided in paragraph (d)(3) of this section, provided that adequate records are maintained to enable Customs to verify any such prepayment.

(3) *Prepayment.* As an alternative to the payment procedures set forth in paragraph (d)(4) of this section, a railroad company may at any time prepay a fee of \$100 to cover all arrivals of a railroad car during a calendar year or any remaining portion of a calendar year. Each prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i)(1) of this section, shall be mailed to: National Finance Center, Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46268.

(4) Statement filing and payment procedures.

(i) The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and any railroad company preferring to act individually, shall file monthly statements with Customs, and shall make payment of the arrival fees to Customs, in accordance with the procedures set forth in paragraphs (d)(4)(ii) and (i) of this section. Each monthly statement shall indicate:

(A) The number of railroad cars subject to the arrival fee during the relevant period;

(B) The number of such railroad cars pulled by each carrier; and

(C) The total processing fees due from each carrier for the relevant period.

(ii) AMTRAK and railroad companies acting individually shall file each monthly statement within 60 days after the end of the applicable calendar month, and the fees covered by each statement shall be remitted with the statement. Monthly statements prepared by the AAR on behalf of individual railroad companies shall be filed within 60 days after the end of the applicable calendar month, and each railroad company shall remit the fees as calculated for it by the AAR within 60 days after the end of that calendar month. In cases of conflict between the AAR and an individual railroad company regarding calculation of the fees, the railroad company shall timely remit the amount as calculated by the AAR even if the dispute is unresolved. Subsequent settlements may be accounted for by an explanation in, and adjustment of, the next payment to Customs.

(5) *Maintenance of records.* The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall maintain all documentation necessary for Customs to verify the accuracy of the fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 3 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in identifying information previously submitted, in accordance with the procedures set forth in paragraph (i)(2) of this section.

(6) *Exceptions.* The following railroad cars are exempt from payment of the fee specified in paragraph (d)(1) of this section:

(i) Any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates, including any such railroad car which is set out for repairs outside the United States and then returned to on-line service without having undergone loading or unloading

of passengers or cargo during the repair period;

(ii) Any railroad car transporting only containers, bins, racks, dunnage and other fixed or loose equipment or materials which have been used for enclosing, supporting or protecting commercial freight; and

(iii) Any railroad car which, at the time of arrival, is being transported by any vessel other than a ferry.

(e) *Fee for arrival of a private vessel or private aircraft.*

(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft shall, upon first arrival in any calendar year, proceed to Customs and tender the sum of \$25 to cover services provided in connection with all arrivals of such vessel or aircraft during that calendar year. Upon payment of this annual fee, a decal will be issued and shall be affixed to the vessel or aircraft as evidence that the fee has been paid. Except in the case of private aircraft, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the \$25 annual fee specified in paragraph (e)(1) of this section. Prepayment may be made at a Customs district or port office, or by mail in accordance with paragraph (i)(1) of this section, and shall be accompanied by a properly completed Customs Form 339, Annual User Fee Decal Request.

(3) *Exceptions.* The following are exempt from payment of the fee specified in paragraph (e)(1) of this section:

(i) Private pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to Customs;

(ii) Any private pleasure vessel granted a cruising license under § 4.94 of this chapter, during the term of the license; and

(iii) Any private vessel which, at the time of arrival, is being transported by any vessel other than a ferry.

(f) *Fee for dutiable mail.* The addressee of each item of dutiable mail for which a Customs officer prepares documentation shall be assessed a processing fee in the amount of \$5. When the merchandise is delivered by the Postal Service, the fee shall be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due. When Customs collects the fee directly from the importer or his

agent, the fee will be included as a separate item on the informal entry or entry summary document.

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section, a fee of \$5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) *Exceptions.* The fee specified in paragraph (g)(1) of this section shall not apply to the following categories of arriving passengers:

(i)(A) Persons whose journey:

(1) Originates in Canada, Mexico, a territory or possession of the United States, or any adjacent island; or

(2) Originates in the United States and is limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(B) For purposes of paragraph (g)(2)(i)(A) and paragraph (g)(3) of this section, a journey, which may encompass multiple destinations and more than one mode of transportation, shall be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States. In addition, for purposes of this paragraph, territories and possessions of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands.

(ii) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided such crew member or other person is traveling for an official business purpose and not for pleasure;

(iii) Diplomats and other persons in possession of a visa issued by the U.S. Department of State in class A-1, A-2, C-2, C-3, G-1 through G-4, or NATO 1-6;

(iv) Persons departing from and returning to the United States without having touched a foreign port or place;

(v) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision thereof, so long as the aircraft is not carrying persons or

merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/Customs Military Inspection Program;

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport; and

(vii) Persons who are in transit to a destination outside the United States and for whom Customs inspection services are not provided.

(3) *Fee collection procedures.* Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the fee specified in paragraph (g)(1) of this section. The fee shall be separately identified with a notation "Federal inspection fees" on the ticket or travel document to indicate that the required fee has been collected from the passenger. If the ticket or travel document is not so marked and was issued in a foreign country, the fee shall be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at time of departure from the United States, the carrier making the collection shall issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents shall collect the fee in the same manner as a carrier. Collection of the fee shall include the following circumstances:

(i) When a through ticket or travel document is issued covering a journey into the customs territory of the United States which originates in a location other than one specified in paragraph (g)(2)(i)(A) of this section;

(ii) When a return ticket or travel document is issued in connection with a journey which originates in the United States and includes a stop in a location other than one specified in paragraph (g)(2)(i)(B) of this section; or

(iii) When a passenger arrives in the customs territory of the United States in transit from a location other than one specified in paragraph (g)(2)(i)(A) of this section and is processed by Customs.

(4) *Payment and quarterly statement procedures.* Payment to Customs of the fees required to be collected under paragraphs (g) (1) and (3) of this section shall be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees shall be made by the air or sea carrier, travel agent, tour wholesaler,

or other party which issued the ticket or travel document or, in the case of a ticket or travel document issued in a foreign country without the required notation to indicate that the fee was collected from the passenger, by the carrier which provided transportation to the passenger when departing from the United States. Each quarterly fee payment shall be remitted in accordance with the procedures set forth in paragraph (i) of this section and shall be accompanied by a statement which includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer Identification number of the party remitting payment; and

(iii) The calendar quarter covered by the payment.

Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to Customs.

(5) Each carrier contracting with a U.S.-based tour wholesaler is responsible for notifying Customs of each flight or voyage so contracted, the number of spaces contracted for on each flight or voyage, and the name, address and taxpayer identification number of the tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(6) *Maintenance of records.* Each air or sea carrier, travel agent, tour wholesaler, or other party affected by this paragraph shall maintain all such documentation necessary for Customs to verify the accuracy of fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee calculation. Each such affected party shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in the identifying information previously submitted, in accordance with the procedures set forth in paragraph (i)(2) of this section.

(7) *Limitation on charges.* Except in the case of costs reimbursed under § 24.17(a)(14) of this part, Customs services provided to passengers arriving in the United States on scheduled airline flights (as defined in § 122.1(k) of this chapter and operating within the requirements of subpart D of part 122 of this chapter) shall be provided at no cost to airlines and airline passengers other than the fee specified in paragraph (g)(1) of this section.

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each permit held by an individual, partnership, association, or corporate broker as provided in § 111.96(c) of this chapter.

(i) *Fee remittance and information submission procedures.*

(1) *Fee remittance.* All fee payments required under this section shall be in the amounts prescribed and shall be made in U.S. currency, or by check or money order payable to the United States Customs Service, in accordance with the provisions of § 24.1 of this part. If payment is made by check or money order, the check or money order shall be annotated with the appropriate class code, as follows:

(i) Commercial vessels (other than barges and other bulk carriers from Canada or Mexico), 491;

(ii) Barges and other bulk carriers from Canada or Mexico, 498;

(iii) Commercial trucks, 492 for each individual arrival and 902 for any prepayment of the maximum calendar year fee;

(iv) Railroad cars, 493 for each individual arrival and 903 for any prepayment of the maximum calendar year fee;

(v) Private vessels, 904;

(vi) Private aircraft, 494;

(vii) Dutiable mail, 496;

(viii) Commercial vessel and commercial aircraft passengers, 495; and

(ix) Customs broker permits, 497.

Except as otherwise provided in this section, all fee payments not made at the time of arrival shall be mailed to: U.S. Customs Service, P.O. Box 198151, Atlanta, Georgia 30384. In addition to any information specified elsewhere in this section, each payment by mail shall be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies.

(2) *Information submission.* Unless otherwise specified in this section, all information, summaries, reports, or other data required to be submitted to Customs under this section shall be mailed to the Director, National Finance Center, Attn: Revenue Branch, P.O. Box 68907, Indianapolis, Indiana 46268.

(j) *Treatment of fees as Customs duty.*

(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section,

and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

PART 111—CUSTOMS BROKERS

1. The authority citation for part 111 is amended by revising the specific authority citation for § 111.96 to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641; unless otherwise noted.

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

2. Section 111.96(c) is revised to read as follows:

§ 111.96 Fees.

(c) *User Fee.* An annual user fee of \$125 will be assessed for each permit held by an individual, partnership, association, or corporate broker. The fee is payable for each calendar year in each district in which a broker has a permit to do business, shall be paid by the due date as published annually in the *Federal Register*, and shall be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit under § 111.19(b) of this part, the full \$125 fee shall be remitted with the application regardless of the point during the calendar year at which the application is submitted. If a broker fails to pay the fee by the due date, the district director shall notify the broker in writing of the failure to pay and shall revoke the permit to operate. The notice will constitute revocation of the permit.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.29 is amended by revising the section heading and the section text to read as follows:

§ 122.29 Arrival fee and overtime services.

Private aircraft may be subject to the payment of an arrival fee for services provided as set forth in § 24.22 of this chapter. For the procedures to be followed in requesting overtime services in connection with the arrival of private aircraft, see § 24.16 of this chapter.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

2. Section 123.0 is amended by adding a sentence at the end to read as follows:

§ 123.0 Scope.

Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter.

§ 123.1a [Removed]

3. Section 123.1a is removed.

PART 145—MAIL IMPORTATIONS

1. The authority citation for part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

2. Section 145.0 is amended by adding a sentence at the end to read as follows:

§ 145.0 Scope.

The fee applicable to each item of dutiable mail for which Customs prepares documentation is set forth in § 24.22 of this chapter.

§ 145.1a [Removed]

3. Section 145.1a is removed.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the listings for sections 4.98(i), 123.1a, and 145.1a.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: October 4, 1993.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 93-25835 Filed 10-20-93; 8:45 am]
BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplemental NADA provides for expanding the use of currently approved bambermycins containing Type A medicated articles to making Type C medicated feeds for use in cattle fed in confinement for slaughter.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1638.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rt. 202-206 North, P. O. Box 2500, Somerville, NJ 08876-1258, has filed a supplement to NADA 44-759. The supplemental NADA provides for expanding the use of currently approved (broiler chickens, growing-finishing swine, and growing turkeys) 2-, 4-, and 10-gram-per-pound bambermycins Type A medicated articles to make Type C medicated feeds for use in cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved as of September 21, 1993, and the regulations are amended in 21 CFR 558.95(a) and (b) to reflect the approval.

As provided in 21 CFR 558.4(a) and (d), bambermycins are Category I drugs, which as the sole drug ingredient, do not require an approved Form FDA 1900 for making Type C feeds as in approved

NADA 44-759 and in 21 CFR 558.95, as amended herein.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 21, 1993, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the claims of increased rate of weight gain and improved feed efficiency in cattle fed in confinement for slaughter for which the application is being approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.95 is amended by revising paragraph (a)(1), by redesignating existing paragraph (b)(4) as paragraph (b)(5), and by adding new paragraph (b)(4) to read as follows:

§ 558.95 Bambermycins.

(a) * * *

(1) 2, 4, and 10 grams of activity per pound to 012799 in § 510.600(c) of this chapter for use as in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

* * * * *

(b) * * *

(4) *Cattle*—(i) *Amount per ton.* 1 to 4 grams.

(a) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(b) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously in a Type C medicated feed at a rate of 10 to 20 milligrams of bambermycins per head per day. Not for use in animals intended for breeding.

(ii) [Reserved]

* * * * *

Dated: October 13, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93-25866 Filed 10-20-93; 8:45 am]

BILLING CODE 4180-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to sections 880-X-8, 880-X-10, and 880-X-12 of the Alabama Surface Mining and Reclamation Rules (Rules) and is intended to make the requirements of the Alabama program no less effective than the Federal program.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of

Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290-7282.

SUPPLEMENTARY INFORMATION

- I. Background on the Alabama Program.
- II. Submission of Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Findings.
- VI. Procedural Determinations.

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Submission of Amendment

Alabama submitted proposed changes to its program by letter dated June 23, 1993 (Administrative Record No. AL-499), in order to improve its regulations pertaining to blaster's certification and permit information and maps, and to correct cross-references. The program amendment modifies the following sections of the Rules: 880-X-8D, 880-X-8G, 880-X-8I, 880-X-8K, 880-X-10C, 880-X-10J, and 880-X-12A. The amendment adds the following sections to the Rules: 880-X-8D-.05(8), 880-X-8F-.08(2)(j), 880-X-8G-.05(8), and 880-X-8I-.07(2)(j).

OSM announced receipt of the proposed amendment in the July 27, 1993, **Federal Register** (58 FR 40104) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on August 26, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17 are the Director's findings concerning the proposed amendment to the Alabama program submitted on June 23, 1993. Revisions not addressed below either concern cross-references and paragraph notations that have been updated to reflect organizational or nomenclature changes or involve nonsubstantive wording changes.

Revisions to Alabama's Rules that are Substantively Identical to the Corresponding Federal Regulations.

State regulation	Subject	Federal Counterpart
880-X-8D-.09(2).	Permit Term.	30 CFR 778.13(b).
880-X-8G-.09(2).	Permit Term.	30 CFR 778.13(b).
880-X-8I-.16(1).	Coal Mine Waste.	30 CFR 784.24(a).
880-X-8K-.10(1)(a).	Permit Applications.	30 CFR 773.15(a)(1).
880-X-10C-.41(1).	Coal Mine Waste.	30 CFR 816.84(a).

Because the above proposed revisions are identical in meaning to the corresponding Federal rules, the Director finds that Alabama's proposed rules are no less effective than the Federal rules.

Revisions to Alabama's Rules that are not Substantively Identical to the Corresponding Federal Regulations.

1. 880-X-8D-.05—Permit Applications

At 880-X-8D-.05(8), Alabama is proposing to add a new regulation requiring that each permit application identify the county(s) and any municipalities and their police jurisdictions from which coal will be mined or severed.

The Federal regulations at 30 CFR 778.13 pertaining to identification of interests contain no comparable provision. However, the Director finds the proposed regulation at 880-X-8D-.05(8) to be consistent with the Federal regulations at 30 CFR 778.13.

2. 880-X-8F-.08—Permit Maps

At 880-X-8F-.08(2)(j), Alabama is proposing to add a new regulation requiring that the map included in a permit application for surface mining show the boundaries of the county(s) and any municipalities and their police jurisdictions from which coal will be mined or severed.

The Federal regulations at 30 CFR 780.14(a) pertaining to operation plans for surface mining contain no comparable provision. However, the Director finds the proposed regulation at 880-X-8F-.08(2)(j) to be consistent with the Federal regulations at 30 CFR 780.14(a).

3. 880-X-8G-.05—Identification of Interests

At 880-X-8G-.05(8), Alabama is proposing to add a new regulation requiring that each permit application identify the county(s) and any municipalities and their police

jurisdictions under which coal will be mined or severed.

The Federal regulations at 30 CFR 778.13 pertaining to identification of interests contain no comparable provision. However, the Director finds the proposed regulation at 880-X-8G-.05(8) to be consistent with the Federal regulations at 30 CFR 778.13.

4. 880-X-8I-.07—Permit Maps

At 880-X-8I-.07(2)(j), Alabama is proposing to add a new regulation requiring that the map included in a permit application for underground mining show the boundaries of the county(s) and any municipalities and their police jurisdictions from under which coal will be mined or severed.

The Federal regulations at 30 CFR 784.23(b) pertaining to operation plans for underground mining contain no comparable provision. However, the Director finds the proposed regulation at 880-X-8I-.07(2)(j) to be consistent with the Federal regulations at 30 CFR 784.23(b).

5. 880-X-10J-.03—Coal Processing Plants

At 880-X-10J-.03(f), Alabama is proposing to revise its regulations pertaining to the use of water wells at coal processing plant operations by deleting this requirement due to an incorrect reference to its regulations at 880-X-10C-.24.

The Federal regulations at 30 CFR 827.12 pertaining to coal preparation plants do not contain provisions for the use of water wells. However, the Director finds that the proposed revision at 880-X-10J-.03(f) if not inconsistent with the Federal regulations at 30 CFR 827.12.

6. 880-X-12A-.07—Blasting Certification

At 880-X-12A-.07, Alabama is proposing to revise its regulations for blaster's certification. Subsections have been renumbered for organizational consistency. At subsection 2(b), applicants who fail to qualify in the blaster's certification examination after two attempts must reapply for certification. Current subsections (6) and (7) which required an annual fee and annual renewal of certificates are deleted. At subsection (4)(a), the term of certification is changed from one year to three years. At subsection (4)(b), the contents of the certification and the blaster's identification card are identified. At new subsection (5), the procedures for renewal of certification are specified. A certified blaster must apply for recertification no later than 90 days prior to expiration of the term of

certification and must make certain demonstrations relating to employment and job knowledge.

The Federal regulations at 30 CFR 850.14 and 850.15 pertaining to the examination and certification of blasters require that the regulatory authority ensure that blaster certification candidates are examined and qualified candidates are certified for a fixed period of time. The regulatory authority shall specify the conditions for maintaining certification. The Director finds that the proposed regulations at 880-X-12A-.07 are no less effective than the Federal regulations at 30 CFR 850.14 and 850.15.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 27, 1993, *Federal Register* (58 FR 40104) ended on August 26, 1993. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Alabama program. The Department of the Army, Corps of Engineers; the Department of Agriculture, Soil Conservation Service, and Forest Service; the Department of the Interior, Bureau of Land Management, Bureau of Mines, and Fish and Wildlife Service; and the Alabama Historical Commission concurred without comment.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Alabama program submitted on June 23, 1993.

The Federal rules at 30 CFR part 901 concerning the Alabama program are being amended to implement the

Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This final rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the Federal Register.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have

a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 15, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 901.15, a new paragraph (p) is added to read as follows:

Section 901.15 Approval of Regulatory Program Amendments

* * * * *

(p) The following amendment submitted to OSM on June 23, 1993, is approved effective October 21, 1993.

1. Revision of the following Alabama Surface Mining Commission regulations:

- 880-X-8D-.09(2)—Permit Term
- 880-X-8G-.09(2)—Permit Term
- 880-X-8I-.16(1)—Coal Mine Waste
- 880-X-8K-.10(1)(a)—Permit Applications
- 880-X-10C-.41(1)—Coal Mine Waste
- 880-X-10J-.03(f)—Coal Processing Plants

880-X-12A-.07—Blasting Certification

2. Addition of the following Alabama Surface Mining Commission regulations:

- 880-X-8D-.05(8)—Permit Applications
- 880-X-8F-.08(2)(j)—Permit Maps
- 880-X-8G-.05(8)—Identification of Interests

880-X-8I-.07(2)(j)—Permit Maps

[FR Doc. 93-25851 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09-93-032]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard hereby provides notice that the City of Chicago, Illinois, has been granted permission to temporarily deviate from the regulations governing the opening of certain drawbridges over the Chicago River, from October 1 through November 30, 1993, for the purpose of further evaluating the reasonableness of possible changes to the permanent regulations. This deviation requires the City to open the bridges on signal after receiving an advance notice of a vessel's intended time of passage through the draws without regard to the number of vessels to be afforded passage, and establishes specific periods of time in which these bridge openings are to be scheduled. The City is being granted this deviation to reduce the frequency with which it must open its drawbridges. This deviation is experimental in nature and is intended to provide the Coast Guard with evaluation periods from which to test the reasonableness of the current regulatory structure.

EFFECTIVE DATE: The period of deviation begins on Friday, October 1, 1993, and continues through Tuesday, November 30, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, or may be delivered to room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name

and address, this docket number (CGD09-032), the basis for each comment and specific provisions of the deviation to which each comment applies. If acknowledgment of the receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a Notice of Proposed Rulemaking which will again request comments. A public hearing might also be held.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert W. Bloom, Jr., Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Background and Purpose

The bridges owned and operated by the City of Chicago are presently governed in accordance with 33 CFR 117.391, which states that most bridges will open on signal, with exceptions of certain bridges that need not open unless advance notice is given of a vessel's time of intended passage. Additionally, the current regulation authorizes the City to not open the draws during peak vehicle traffic periods, i.e., morning and afternoon rush hours.

There are two vessel traffic periods, breakout and return, when there are as many as five to twenty-five boats on given days, leaving boatyards through the Chicago River system in the spring and returning in the fall. During the summer period, the boat traffic in the Chicago area consists of recreational vessels in need of repair which are returning to the yards on a temporary basis.

Thus, including the winter period, there appear to be four distinct periods in the Chicago River area, during which the need for bridge openings changes substantially. Therefore, it might be appropriate for the bridge regulations to vary by these four seasons.

The City requests that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there is a special event on these days, during which time a bridge would not be required to open at all for vessel traffic to pass. The City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System. The City feels there is a need to schedule vessel movement on Saturdays and Sundays because of high volumes of vehicular traffic on these days.

A series of deviations has been granted to the city in order to evaluate the reasonableness of possible changes to the permanent regulations. The Coast Guard previously granted three temporary deviations to the regulations for bridges owned and operated by the City of Chicago.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the *Federal Register*, 58 FR 27933, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of vessels consisting of no less than five and not more than twenty-five boats; on Tuesdays and Thursdays the draws were required to open for the passage of vessels consisting of no less than five and not more than twenty-five boats, from 6:30 p.m. until all organized trips had safely completed.

On Wednesday, June 16, 1993, the Coast Guard published a second temporary deviation in the *Federal Register*, 58 FR 33191, which changed the starting times for scheduled trips on Tuesdays and Thursdays to start one half-hour earlier, from 6:30 p.m. to 6 p.m., and added a Wednesday trip to the regulated periods when vessels would be allowed to pass through the draws of the bridges. Thus, bridge openings for scheduled trips started at 6 p.m. on Tuesdays, Wednesdays, and Thursdays.

On Thursday, August 12, 1993, the Coast Guard published a third temporary deviation in the *Federal Register*, 58 FR 42856, which changed the Wednesday starting time to 11 a.m. The earlier starting time of 11 a.m. on Wednesdays was changed to provide recreational vessels returning to the boatyards for repairs, or returning to their regular moorings outside the Chicago River System, with more daylight hours to navigate the river. In addition, the requirement that a particular number of vessels accumulate before bridges need open for the passage of masted recreational vessels was eliminated.

This is the fourth temporary deviation being granted to the City of Chicago. The times that the bridges will be required to open for the passage of masted recreational vessels has been changed for Saturdays, Sundays, Tuesdays, Wednesdays and Thursdays. Also, a special Monday opening date has been included in this deviation because it is a holiday and opening the bridges on this day will not disrupt a great number of people transiting to and from work. The requirement that vessels give at least 24 hours notice in advance of the time of intended passage through

the Chicago River System has not changed.

The Tuesday and Thursday requirement for the bridges to open starting at 6 p.m. has been changed to 6:30 p.m.

Comments received from the first three temporary deviations indicated concern with vessels navigating at night and the danger of a large number of vessels navigating the river at the same time. The city feels there is a need to schedule vessel movement on Saturdays and Sundays because of high volumes of vehicular traffic on these two days. Therefore, the starting time on Saturdays and Sundays has been changed. On Saturdays and Sundays the draws shall open for the passage of masted recreational vessels between the hours of 7 a.m. and 2 p.m. each day instead of from 6 a.m. on Saturdays through 7 p.m. on Sundays. A daylight opening during the week is necessary for those vessel operators who are not able to schedule a trip on weekends, and for those vessel operators who do not feel safe navigating during the hours of darkness. Therefore, the bridges shall open for the passage of masted recreational vessels between the hours of 10:30 a.m. and 2 p.m. on Wednesdays. The openings during the time frame of this temporary deviation are necessary because of the large number of masted recreational vessels returning to the boatyards for winter storage. However, the new Wednesday opening times should put the returning vessels through and past the main vehicle thoroughfares before the afternoon rush hours begin. This temporary deviation also includes a special opening on Monday, October 11, 1993, which will allow for the passage of masted recreational vessels between the hours of 10:30 a.m. and 2 p.m. The special Monday bridge opening is being added to enable vessels to transit the Chicago River System during a period when most businesses are closed for Columbus Day.

This temporary deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of masted recreational vessels transiting the Chicago River System. The entire series of deviations will provide the Coast Guard with evaluation periods from which to test the reasonableness of the City's cited needs, the needs of navigation, and the current regulatory structure.

Deviation

Notice is hereby given that:
(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation

from operating requirements of 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main branch	South branch	North branch
Lake Shore Drive.	Lake Street ..	Grand Avenue.
Columbus Drive.	Randolph Street.	Ohio Street.
Michigan Avenue.	Washington Street.	Chicago Avenue.
Wabash Avenue.	Madison Avenue.	North Halsted Street.
State Street ..	Monroe Street.	
Dearborn Street.	Adams Street	
Clark Street ..	Jackson Boulevard.	
La Salle Street.	Van Buren Street.	
Wells Street ..	Eisenhower Expressway.	
Franklin-Orleans Street.	Harrison Street.	
	Roosevelt Road.	
	18th Street ...	
	Canal Street .	
	South Halsted Street.	
	South Loomis Street.	
	South Ashland Avenue.	

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall open on signal for the passage of recreational vessels after receiving a 24 hour advance notice during the following periods, subject to the conditions indicated:

(a) From 7 a.m. to 2 p.m. on Saturdays and on Sundays.

(b) At 6:30 p.m. on Tuesdays and Thursdays.

(c) From 10:30 a.m. to 2 p.m. on Wednesday.

(d) On Monday, October 11, 1993, between the hours of 10:30 a.m. and 2 p.m.

(3) During the periods of time the bridges shall open on signal as specified in 2 (a), (b), (c), and (d) above, the bridges shall be operated in such a manner so as to allow all vessels to complete safe passage through the Chicago River System, and shall open

without restriction as to the minimum or maximum number of vessels desiring passage.

(4) Notwithstanding this deviation, the City of Chicago, after receiving a minimum of twenty-four hours advance notice of the intended passage of vessels through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in good condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(5) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(6) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(7) This period of deviation is effective from Friday, October 1, 1993, through Tuesday, November 30, 1993.

Dated: September 29, 1993.

W. R. Wilkins,

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

[FR Doc. 93-25651 Filed 10-20-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 13-2-5846; FRL4782-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On March 2, 1993, USEPA proposed to approve a request by the State of Illinois to revise its State Implementation Plan (SIP) for particulate matter (PM). The purpose of the SIP revision is to satisfy the federal requirements for an approvable PM SIP for LaSalle County, Illinois area, which is designated as a moderate nonattainment area as specified under

the Clean Air Act (Act) as amended by the Clean Air Act Amendments (CAAA) of 1990. The Act requires that a state have an approved SIP to achieve the federal air quality standards. The CAAA requires submission of a PM SIP for all initial PM nonattainment areas by November 15, 1991. This rule approves the SIP revision for the LaSalle County PM nonattainment area. USEPA's action is based upon a revision request that was submitted by the State on October 16, 1991, with supplementary material submitted on November 13, 1991.

EFFECTIVE DATE: This action will be effective on November 22, 1993.

ADDRESSES: A copy of this revision to the Illinois SIP is available for inspection at:

Regulation Development Section,
Regulation Development Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604

Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Gustavo Felix, Regulation Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6009.

SUPPLEMENTARY INFORMATION:

I. Background

Previously, USEPA published a rule announcing the designations and classifications for PM occurring by operation of law upon enactment of the CAAA (see 56 FR 11101, March 15, 1991). In addition, USEPA has published a follow-up rule correcting the boundaries and designations of some areas in light of comments addressing the March 1991 notice (see 56 FR 37654, August 8, 1991). Both of these rules provide a detailed discussion of the history and current status of PM areas nationwide.

By November 15, 1991, States were to adopt and submit to USEPA a SIP rule for all those areas that were classified as moderate PM nonattainment areas by operation of law upon enactment of the 1990 CAAA (see subpart 4 of Part D of title I of the Act (section 189)). SIP rules submitted by States to meet this requirement were to comply with both the general requirements for nonattainment areas identified in section 172 of the Act, and the requirements specific to PM in subpart 4 of part D. In particular, section 189(a) of the Act required that all States with initial moderate PM nonattainment

areas were to submit responsive SIP regulations by November 15, 1991, which were to include:

(1) Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994, or a demonstration that attainment by that date is impracticable.

(2) Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM are implemented by December 10, 1993.

An additional requirement imposed by the CAAA, a new source permit program meeting the requirements of part D of the Act is required for the construction and operation of new and modified major stationary sources of PM (including, in some cases, PM precursors), and is due by June 30, 1992, for all of the initial moderate PM nonattainment areas. This requirement will be addressed in a separate rule.

Summary of State Submittal

What follows is a brief discussion of the State's submittal. For more detailed

discussion of the State's submittal and USEPA's analysis of it, the reader is directed to the March 2, 1993 (58 FR 12006) proposed rule and to the rationale documents for these proposed and final rules which are part of the rulemaking docket and available from the Region 5 office listed above.

The revision is applicable to a single facility which is owned and operated by Lone Star Industries (Lone Star) in Oglesby, Illinois. Lone Star operates a Portland Cement manufacturing plant. The revision amends Part 212 Visible and Particulate Emissions of Chapter I Subtitle B of Title 35 of the Illinois Administrative Code (35 IAC), specifically Sections 212.110, 212.423, and 212.424 and Part 211, Definitions and General Provisions, 35 IAC, Section 211.122, of the Illinois State rules.

The titles of the revised sections are as follows:

- Section 211.122 Definitions
- Section 212.110 Measurement Methods
- Section 212.111 Abbreviations and Units
- Section 212.113 Incorporation by Reference

Section 212.423 Emission Limits for Portland Cement Manufacturing Plants Located in LaSalle County, South of the Illinois River.

Section 212.424 Fugitive Particulate Matter Control for the Portland Cement Manufacturing Plant and Associated Quarry Operations Located in LaSalle County, South of the Illinois River.

Control Strategy

A total of 32 point sources and 14 areas sources were identified as contributing to the PM nonattainment problem in LaSalle County. As presented in the accompanying table, four of the point sources will be controlled by specific mass emission limits contained in Section 212.423(b) of 35 IAC. The four point sources are a kiln, a clinker cooler, finish mill high efficiency air separator, and a raw mill roller mill (RMRM). See table below.

	PM-10 emission limits			
	Rate		Concentration	
	kg/hr	(lb/hr)	mg/scm	(gr/scf)
A. Clinker Cooler	4.67	(10.3)	28.147	(0.012)
B. Finish Mill High Efficiency Air Separator	2.68	(5.9)	26.087	(0.011)
	PM-10 emission limits including condensable PM-10			
	Rate		Concentration	
	kg/hr	(lbs/hr)	mg/scm	(gr/scf)
A. Raw Mill, Roller Mill (RMRM)	6.08	(13.4)	27.5	(0.012)
B. Kiln without RMRM Operating	19.19	(42.3)	91.5	(0.040)
C. Kiln with RMRM	11.43	(25.2)	89.2	(0.039)

It should be noted that the kiln has two emission limits. One limit applies when the RMRM is operating and the other applies when the RMRM is not operating. The reason for the two emission limits is that some of the kiln exhaust is fed to the RMRM when the RMRM is operating to help reduce the kiln emissions. However, when the RMRM is not operating and the kiln is in operation, the kiln's emission limit must be increased to include emissions not being fed to the RMRM.

All other point sources at the cement plant are regulated by a no visible emission limit specified in Section 212.423(c) of 35 IAC. The no visible emission limit assures that the baghouses controlling emissions from the point sources such as the conveyor transfer points will be operating properly. A list of point sources may be

found in the Technical Support Documents for this rulemaking. Complete descriptions of the individual point sources may be found in the State submittal. Both are available for inspection at the Region 5 office listed above.

The area sources will be controlled by fugitive dust suppression methods such as intermittent water applications on roads and foam suppressant applications to material processes. These fugitive dust controls are required by Section 212.424(d) of 35 IAC. The fugitive dust sources that require controls include unpaved roads and open areas traversed by motor vehicles, and crushing, screening, and conveying operations at the quarry that provide raw materials for the Portland cement manufacturing process.

Attainment Demonstration

Illinois prepared an attainment demonstration using dispersion modeling for LaSalle County. The State's demonstration indicates that the National Ambient Air Quality Standards (NAAQS) for PM will be attained by 1994 in LaSalle County and maintained in future years. The 24-hour primary and secondary PM NAAQS are both 150 micrograms/cubic meter (µg/m³), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m³ is equal to or less than one. See 40 CFR 50.6. The annual primary and secondary PM NAAQS are both 50 µg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 µg/m³. The

dispersion modeling in the attainment demonstration predicted 148 $\mu\text{g}/\text{m}^3$ as the 24-hour design concentration, thereby demonstrating attainment of the 24-hour PM NAAQS. The dispersion modeling in the attainment demonstration predicted 47 $\mu\text{g}/\text{m}^3$ as the annual design concentration, thus demonstrating attainment of the annual PM NAAQS. A copy of the dispersion modeling analysis and USEPA's review of it are available at the Region 5 office listed above.

The requested SIP submittal includes air quality status, ambient monitoring, modeling, emission inventory, control strategies, and reporting requirements. The individual elements of the SIP revision provide the degree of emission reductions necessary for attainment and maintenance of the PM NAAQS. The emission reductions come from implementing specific mass emission limits on four sources, from visible emission limits on any other portland cement manufacturing process, and from requiring control measures on fugitive sources such as roadways, conveyors, crushing, and screening.

Response to Public Comment

Comments were received in response to the proposed rule from Lone Star. In general, Lone Star is in agreement with USEPA's proposed action, but requested that their comments be made part of the administrative record of this requested SIP revision. Lone Star's comments and USEPA's responses are summarized below.

Comment: Lone Star questioned the appropriateness of USEPA's Method 202, 40 Code of Federal Regulations, part 51, appendix M, to test for condensible PM. The SIP revision requires the raw mill roller mill and the kiln to be tested for condensible PM. Lone Star believes this test method has two potential deficiencies.

(1) Ammonia gas in the kiln will react in the Method 202 impinger solution to form ammonium chloride, ammonium sulfate, and possibly other ammonium salts. This would result in ammonium salts being measured as condensible PM. Lone Star requested that USEPA declare that for the purpose of determining compliance of the raw mill roller mill and kiln with the PM emission limits, the weight of all the ammonium salts found in the Method 202 impinger solution shall be deducted in calculating condensible PM.

(2) All the condensible particulate are treated as PM-10 (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers). Lone Star believes that some of the particles that condense may reach particle sizes greater than 10 microns.

USEPA Response on Both Deficiencies: The State regulations already exclude the ammonium chloride from the measurement of condensible PM. As for the ammonium sulfate, the calculation procedures used in Method 202 automatically subtracts the ammonium portion of ammonium sulfate. Any ammonium sulfate formed in the Method 202 impinger train would

be collected as inorganic condensible PM. Equation 202-2 from Method 202 calculates the total inorganic condensibles.

$$m_i = m_r \frac{V_{ic}}{V_{ic} - V_b} - m_c$$

Eq. 202-2

m_i = Mass of inorganic condensibles, mg

m_r = Mass of dried sample from inorganic fraction, mg

V_{ic} = Volume of impinger contents sample, ml

V_b = Volume of aliquot taken for sulfate analysis, ml

m_c = Mass of Ammonium Ions (NH_4^+) from ammonium sulfate, mg

The mass of the ammonium from ammonium sulfate is calculated from

$$m_c = K C_{\text{SO}_4} V_{ic}$$

Eq. 202-1

K = -0.0205, when correcting for NH_4^+ and H_2O (use this factor when adding back two water molecules and 2 hydrogen molecules)

= .3542, when only correcting for NH_4^+ (two hydrogen molecules are added back)

C_{SO_4} = Concentration of sulfate ions in the sample, mg/ml

It should be noted that 40 CFR 51, Appendix M list the K factors at +0.0205 and 0.184. These values are incorrect and a rule correction will be published in the near future correcting the K factors. The second K factor is calculated as followed:

$$K = \frac{\text{molecular weight (MW) of two } \text{NH}_4^+ \text{ molecules} - \text{MW of two H molecules}}{\text{MW of } \text{SO}_4^{2-}}$$

The first K factor is calculated in a similar fashion.

As for other ammonium salts, there is no evidence that any other ammonium salts besides ammonium chloride and ammonium sulfate would be produced in the Method 202 impinger train. Lone Star has not provided any evidence that other ammonium salts are formed in the Method 202 impinger train.

It should be noted that Method 202 is cited in the State regulations as 55 FR 41546 (October 12, 1990). The requested SIP revision is approvable with this citation for Method 202 because the condensible emission calculations are more conservative than the correct calculations. However, once USEPA makes the needed correction to Method 202, it would be appropriate for the

State to revise its regulations to cite the correct reference for Method 202.

In response to the second deficiency identified by Lone Star, particulate matter that condenses from a gaseous state to a liquid or solid state is likely to condense to very small particles. There is no evidence that condensible particles reach sizes greater than 10 microns. Lone Star has not provided any evidence that a significant amount of condensible particulate matter may reach sizes greater than 10 microns.

Comment: Another Lone Star comment concerns contingency measures, as required by section 172(c)(9) of the Act. See generally 57 FR 13543-44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of

other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State, upon a determination by USEPA that the area has failed to make Reasonable Further Progress or attain the PM NAAQS by the applicable statutory deadline.

Lone Star believes it would be unfair and unreasonable to assume that additional emission reductions could come only from Lone Star sources, which are already controlled.

USEPA Response: Contingency measures for the LaSalle County nonattainment area are not due until November 15, 1993. It is the State of Illinois' responsibility to adopt additional control measures and submit them to USEPA as the contingency plan for LaSalle County. USEPA's

responsibility is to determine if the contingency control strategy Illinois submits meets the requirements of the Act. If the State of Illinois fails to submit an approvable contingency plan for LaSalle County, sanctions may be imposed and a Federal Implementation Plan may be required. Contingency measures are a separable requirement for the LaSalle nonattainment area PM SIP, and are not germane to this rulemaking. This issue will be addressed in a future rulemaking.

Final Rulemaking Action

Based on the March 2, 1993, proposed rule and in consideration of the public comments received in response to the proposed rule, USEPA approves the requested plan revision submitted to USEPA on October 16, 1991, and November 13, 1991, for the LaSalle County nonattainment area. The State of Illinois has demonstrated that the LaSalle County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994. As noted above, additional submittals for the initial moderate PM nonattainment areas are due subsequent to this rule. USEPA will determine the adequacy of any such submittal once any are received.

USEPA specifically approves the incorporation of the revisions and additions to the following State rules into the Illinois SIP: 35 IAC, Sections 211.122, 212.110, 212.111, 212.113, and 212.423. Section 212.424 was already approved for incorporation into the SIP in an earlier Final Rule. See 40 CFR 52.720 (58 FR 3847, January 12, 1993).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 1993. 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

Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of

Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 23, 1993.

Carol M. Browner,
Administrator.

For the reasons stated in the preamble, 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(95) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(95) On October 16, 1991, and November 13, 1991, the State submitted particulate matter regulations adopted as part of Pollution Control Board Proceeding R91-6. These regulations concern particulate matter controls for LaSalle County, Illinois.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) The addition of definitions for "Condensable PM-10", "PM-10", "Portland Cement Manufacturing Process Emission Source", and the modification of the definition of "Portland Cement Process" to Part 211 Definitions and General Provisions: Section 211.122 Definitions; adopted at 15 Illinois Register 15673, effective October 14, 1991.

(B) Part 212 Visible and Particulate Matter Emissions: Section 212.110 Measurement Methods; the addition of an abbreviation for pounds per hour to Section 212.111 Abbreviations and Units; additions and deletions to Section 212.113 Incorporations by Reference including the addition and/or renumbering of paragraphs (a), (b), (c), (d), (e), and (h) and the deletion of paragraphs earlier numbered as (a) and (f); Section 212.423 Emission Limits for Portland Cement the Manufacturing Plant Located in LaSalle County, South of the Illinois River; adopted at 15 Illinois Register 15708, effective October 4, 1991.

[FR Doc. 93-25906 Filed 10-20-93; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 180

[OPP-300258A; FRL-4631-8]

RIN 2070-AB78

Revocation of Exemption from Requirement of a Tolerance for Certain Inert Chemicals in Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the exemptions from the requirement of a tolerance for seven pesticidally inert ingredients in or on raw agricultural commodities (RACs) listed in 40 CFR 180.1001(c)—hexane, methyl chloride, perchloroethylene, and propylene oxide; 40 CFR 180.1001(d)—chloroform, epichlorohydrin, ethylene dichloride (1,2-dichloroethane), and hexane (including isomeric hexanes); and 40 CFR 180.1001(e)—ethylene dichloride (1,2-dichloroethane), perchloroethylene, and propylene oxide. EPA initiated this action because the data base for these inerts is so deficient that the Agency cannot conclude that a tolerance is not necessary to protect the public health. **EFFECTIVE DATE:** This regulation becomes effective October 21, 1993.

ADDRESSES: Written objections, identified by document control number [OPP-300258A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa Chun, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8318. **SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the *Federal Register* of January 13, 1993 (57 FR 4131), which proposed the revocation of the exemptions from the requirement of a tolerance for residues of seven pesticidally inert ingredients in or on RACs established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, listed in 40 CFR 180.1001(c)—hexane, methyl chloride, perchloroethylene, and propylene oxide; 40 CFR 180.1001(d)—chloroform, epichlorohydrin, ethylene dichloride (1,2-dichloroethane), and hexane (including isomeric hexanes); and 40 CFR 180.1001(e)—ethylene dichloride (1,2-dichloroethane), perchloroethylene, and propylene oxide.

No public comments or requests for referral to an advisory committee were

received in response to the proposed rule. Therefore, based on the information considered by EPA and discussed in detail in the January 13, 1993 proposal and in this final rule, the Agency is hereby revoking the exemptions from the requirement of a tolerance for these seven inert ingredients listed in 40 CFR 180.1001(c), (d), and (e) in or on various RACs. Since these inerts have been eliminated from products or product registrations have been canceled or suspended, there is no legal sale or distribution in the United States. EPA believes there has been adequate time for legally treated agricultural commodities to have gone through channels of trade. Since sufficient time has elapsed in order for residues to dissipate, residues are not expected to appear in any domestically produced commodities. Consequently, the Agency is not recommending the establishment of action levels in place of these exemptions from the requirement of a tolerance.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objection (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is

requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions must include a statement of factual contentions on each issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published January 13, 1993, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these exemptions from the requirement of a tolerance will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of

1980 (Pub. L. 96-354; 94 Stat 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the January 13, 1993 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: August 27, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[Amended]

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

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

2. In § 180.1001(c), (d), and (e) tables, by removing the following entries, as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *
(c) * * *

Inert ingredients	Limits	Uses
Hexane [Removed]	[Removed]	[Removed]
Methyl chloride [Removed]	[Removed]	[Removed]
Perchloroethylene [Removed]	[Removed]	[Removed]
Propylene oxide [Removed]	[Removed]	[Removed]

(d) * * *

Inert ingredients	Limits	Uses
Chloroform [Removed]	[Removed]	[Removed]
Epiclorohydrin [Removed]	[Removed]	[Removed]
Ethylene dichloride (1,2-dichloroethane) [Removed]	[Removed]	[Removed]

Inert ingredients	Limits	Uses
Hexane (including isomeric hexanes) [Removed]	[Removed]	[Removed]

(e) * * *

Inert ingredients	Limits	Uses
Ethylene dichloride (1,2-dichloroethane) [Removed] ...	[Removed]	[Removed]
Perchloroethylene [Removed]	[Removed]	[Removed]
Propylene oxide [Removed]	[Removed]	[Removed]

[FR Doc. 93-25939 Filed 10-20-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1E4033/R2015; FRL-4644-7]

RIN 2070-AB78

Pesticide Tolerance for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide clopyralid in or on the raw agricultural commodity mint hay. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective October 21, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 1E4033/R2015], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 4, 1993 (58 FR 41453), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 1E4033 to EPA on behalf of the Agricultural Experiment Stations of Idaho, Oregon, Washington, and Wisconsin. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodity mint hay at 3.0 parts per million (ppm).

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such

issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

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

List of Subjects in 40 CFR Part 180

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

Dated: September 29, 1993.

Douglas D. Camp,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By amending § 180.431(a) in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Mint, hay	3.0
* * * * *	

[FR Doc. 93-25932 Filed 10-20-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 300

[FRL-4786-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Aidex Corporation Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the deletion of the Aidex Corporation Site in Glenwood, Iowa, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Iowa have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Iowa have determined that remedial actions

conducted at the site, to date, have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 21, 1993.

ADDRESSES: Comprehensive information on this site is available at the following addresses:

EPA Region VII Waste Management Division Records Center, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Glenwood, Iowa City Hall, City of Glenwood, 107 S. Locust Street, Glenwood, Iowa. 51534.

FOR FURTHER INFORMATION CONTACT: Steve Sanders, Remedial Project Manager, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66201, telephone 913-551-7578.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Aidex Corporation Superfund Site, Glenwood, Iowa.

A notice of intent to delete for this site was published in the **Federal Register** August 12, 1993 (58 FR 42916). The closing date for comments on the notice of intent was September 13, 1993. EPA received no comments on the proposed deletion. Therefore, no responsiveness summary was prepared.

Based on a review of monitoring and other data for the site, EPA in consultation with the State of Iowa, has determined that the site does not pose a significant risk to human health or the environment. The site shall continue to be monitored by the Iowa Department of Natural Resources (IDNR). EPA and IDNR will review the groundwater monitoring as part of each five-year review.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites deleted from the NPL when conditions warrant. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air Pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 28, 1993.

Susan Gordon,
Acting Regional Administrator.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site for "Aidex Corporation, Glenwood, Iowa" and by revising the total number of sites from 1,077 to read 1,076.

[FR Doc. 93-25932 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 52e

RIN 0905-AD48

National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the Public Health Service (PHS) Act, as amended, to correct the authority citation and PHS Act section numbers included in the regulations, and references to several HHS regulations that apply to grants awarded under the regulations and make minor language changes.

EFFECTIVE DATE: Effective November 22, 1993.

FOR FURTHER INFORMATION CONTACT: John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B-11, 9000 Rockville Pike, Bethesda, Maryland 20892, or telephone (301) 496-2832 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the PHS Act, as amended (42 U.S.C. 285b-1), were last amended on February 25, 1980 (45 FR 12249). Subsequently, on November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99-158) was enacted, amending the provisions of the PHS Act that authorize NIH programs. As a result of this statutory amendment, the sections of the PHS Act that authorized various National Heart, Lung, and Blood Institute programs were renumbered which necessitates changing the section numbers referenced in the regulations at 42 CFR part 52e. The NIH is amending part 52e to make these changes and to add references to several HHS regulations that apply to awards made under this part. Additionally, NIH is revising the section headings in accordance with Department efforts to simplify the language in its regulations, and is making several minor language changes.

The NIH announced its intention to make these changes in the notice of proposed rulemaking published in the Federal Register on August 19, 1992 (57 FR 37502). We gave the public 60 days to comment. We received no substantive comments. Consequently, these regulations are the same as the proposed regulations except for minor editorial changes. The following statements are provided as public information.

1. Regulatory Impact Statement

This rule has been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that it does not constitute a major rule as specified in the Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

This rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Secretary has determined that compliance with the regulations will not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by these proposed regulations are:
 93.837—Heart and Vascular Diseases Research

93.838—Lung Diseases Research
 93.839—Blood Diseases and Resources Research

List of Subjects in 42 CFR Part 52e

Grant programs—health; Health; Medical research.

Dated: September 23, 1993.

Philip R. Lee,
 Assistant Secretary for Health.

Approved: September 30, 1993.

Donna E. Shalala,
 Secretary.

Accordingly, part 52e of title 42 of the Code of Federal Regulations is amended to read as set forth below.

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

1-2. Revise the authority citation for part 52e to read as follows:

Authority: 42 U.S.C. 216, 285b-1.

3. Revise the headings for §§ 52e.1, and 52e.3—52e.7 to read as follows:

§ 52e.1 To what programs do these regulations apply?

* * * * *

§ 52e.3 Who is eligible to apply?

§ 52e.4 How to apply.

§ 52e.5 What are the project requirements?

§ 52e.6 How will NIH evaluate applications?

§ 52e.7 What are the terms and conditions of awards?

* * * * *

4. Amend § 52e.1 by revising paragraph (a) to read as follows:

§ 52e.1 To what programs do these regulations apply?

(a) This part applies to grants under section 419 of the Act (42 U.S.C. 285b-1) for projects to:

(1) Demonstrate and evaluate the effectiveness of new techniques or procedures for the diagnosis, prevention, and treatment of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis and treatment of these diseases in children;

(2) Develop and evaluate methods of educating health practitioners concerning the prevention and control of these diseases; and

(3) Develop and evaluate methods of educating the public concerning the prevention and control of these diseases.

* * * * *

5. Revise § 52e.2 to read as follows:

§ 52e.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.)

Council means the National Heart, Lung, and Blood Advisory Council, established under section 406 of the Act (42 U.S.C. 284a).

Director means the Director of the National Heart, Lung, and Blood Institute and any official to whom the authority involved may be delegated.

Emergency medical services means the services utilized in responding to the perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

HHS means the Department of Health and Human Services.

National program means the National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program referred to in section 421 of the Act (42 U.S.C. 285b-3).

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

6. Amend § 52e.4 by removing “, NHLBI,” in paragraphs (a) and (c).

7. Amend § 52e.6 by revising paragraph (a) introductory text to read as follows:

§ 52e.6 How will NIH evaluate applications?
 (a) Within the limits of funds available, after consultation with the Council, the Director may award grants to applicants with proposed projects which in the Director's judgment will best promote the purposes of section 419 of the Act, taking into consideration among other pertinent factors:

* * * * *

8. Revise § 52e.8 to read as follows:

§ 52e.8 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

- 45 CFR Part 46—Protection of human subjects
- 45 CFR Part 74—Administration of grants
- 45 CFR Part 75—Informal grant appeals procedures
- 45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
- 45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964
- 45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
- 45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
- 45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
- 45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
- 45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments
- 45 CFR Part 93—New restrictions on lobbying
- 51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules
- "Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), or successor

§§ 52e.5, 52e.7, and 52e.9 [Amended]
 9. Remove, "NHLBI," each place it appears in the following provisions:
 a. Section 52e.5(a) and (b);
 b. Section 52e.7(b); and
 c. Section 52e.9.

[FR Doc. 93-25525 Filed 10-20-93; 8:45 am]
 BILLING CODE 4140-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815 and 1870

Approval Authorities for Conducting Multiple Rounds of Discussions and Negotiation With Multiple Offerors

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has revised the NASA FAR Supplement to make editorial corrections and administrative changes to clarify internal approval procedures for source selection procedures.

DATES: This final rule is effective October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

NASA source selection procedures permit multiple rounds of written/oral discussions and negotiation with multiple offerors. Existing agency regulations are not clear regarding which agency official has the authority to approve use of these procedures, and the NASA FAR Supplement is revised to clarify the appropriate approval authorities. These revisions affect internal procedures only and have no direct impact on external entities. The revisions are issued as a final rule to ensure immediate implementation.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815 and 1870

Government procurement.
 Tom Luedtke,
Acting Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815 and 1870 are amended as follows:

1. The authority citation for 48 CFR parts 1815 and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

1815.611 [Added]

2. Section 1815.611 is added to read as follows:

1815.611 Best and final offers.

After receipt of Best and Final Offers (BAFOs), the SSO may consider the evaluation findings not sufficiently comprehensive to make a selection decision. In this rare circumstance, it may be necessary to reopen discussions and issue an additional request for BAFOs to all offerors in the competitive range. For competitive procurements of \$25 million or more, approval of the Associate Administrator for Procurement (Code HS) is required for this course of action. For competitive procurements with values less than \$25 million, approval of the Procurement Officer is required.

1815.613-71 [Amended]

3. In section 1815.613-71, paragraph (b)(5)(i) is revised to read as follows:

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

* * * * *

(b) * * *
 (5) *Conduct of written or oral discussions.*

(i) *General.* Careful judgment must be exercised in determining the extent of discussions. The SEB should consider such factors as the time available, the expense and administrative limitations, and the size and significance of the procurement in deciding on the type, duration, and depth of the discussions. Normally, written or oral discussions are completed with each offeror in the competitive range in one round. In some cases, however, good business practice may warrant having more than one round of discussions with the offerors whose proposals are in the competitive range. In these cases, when discussions have been declared closed and BAFOs requested, the approval of the Associate Administrator for Procurement (or the Procurement Officer when the value of the procurement is less than \$25 million) is required to reopen discussions (see 1815.611). Each subsequent round of discussions is subject to the same groundrules as the initial round (e.g., no discussion of weaknesses where such discussion is otherwise prohibited).

* * * * *

4. In section 1815.613-71, paragraph (b)(6) is removed and paragraphs (b)(7) and (b)(8) are redesignated (b)(6) and (b)(7), respectively.

PART 1870—NASA SUPPLEMENTARY REGULATIONS**Appendix I to 1870.303 [Amended]**

5. In section 1870.303, Appendix I, chapter 4, paragraph 407 is amended by revising paragraph 2.g. to read as follows:

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

* * * * *

CHAPTER 4—SEB OPERATING PROCEDURES FOR SOLICITATION AND EVALUATION

* * * * *

407 *Final Evaluation*

* * * * *

2. Written and/or Oral Discussions

* * * * *

g. Normally, written or oral discussions are completed with each offeror in the competitive range in one round. In some cases, however, a single round of discussions prior to requesting BAFOs may be insufficient for a comprehensive evaluation, and multiple sessions may be conducted. In these cases, when discussions have been declared closed and BAFOs requested, the approval of the Associate Administrator for Procurement (or the Procurement Officer when the value of the procurement is less than \$25 million) is required to reopen discussions (see 1815.611). Each subsequent round of discussions is subject to the same groundrules as the initial round (e.g., no discussion of weaknesses where such discussion is otherwise prohibited).

* * * * *

[FR Doc. 93-25774 Filed 10-20-93; 8:45 am]

BILLING CODE 7510-01-M

48 CFR Part 1871**Notification of Test of MidRange Procurement Procedures**

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Temporary rule.

SUMMARY: The Office of Federal Procurement Policy has approved a test of NASA's MidRange Procurement Procedures under the authority of section 15 of the Office of Federal Procurement Policy Act. The MidRange Procurement Procedures were developed to address relatively low dollar value procurements above the small purchase threshold. The test will be conducted at the Marshall Space Flight Center for up to 4 years on

procurements other than construction and A&E services estimated to be between \$25,000 and \$500,000 in basic annual value. Up to four 1-year options are permitted allowing a total estimated contract value of \$2.5M.

DATES: This regulation is effective July 1, 1993, and expires June 30, 1997.

Section 1871.102(b) will not be implemented until Congressional approval is granted and notice is published in the *Federal Register* and Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, (202) 358-0431.

SUPPLEMENTARY INFORMATION: NASA's MidRange Procurement procedures include (1) The use of an Electronic Bulletin Board to replace synopses of contracting opportunities in the Commerce Business Daily and (2) bid and proposal response times less than currently permitted by statute. Approval for those aspects of the MidRange Procedures requires Congressional approval which has not been granted as yet. Those aspects of the MidRange Procedures will not be fully implemented until Congressional approval is granted. NASA intends to implement these procedures on a parallel test basis; that is, an Electronic Bulletin Board will be established and used in addition to conventional Commerce Business Daily synopses for selected procurements. This will provide the Agency with valuable practical experience in the effective use of EBBs prior to full implementation of the EBB as the sole method of advising potential offerors of contracting opportunities. Notice of the use of the EBB will be published in the Commerce Business Daily (CBD).

List of Subjects in 48 CFR Part 1871

Government procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, under the authority of 42 U.S.C. 2473(c)(1), 48 CFR ch. 18 is amended by adding part 1871 as follows:

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.000 Scope of part.

Subpart 1871.1—General

1871.101 Purpose.
1871.102 Authority.
1871.103 Applicability.
1871.104 Definitions.
1871.105 Policy.

Subpart 1871.2—Planning and Requirements Process

1871.201 Use of buying team.
1871.202 Organizational responsibilities.
1871.202-1 Requiring organization.

1871.202-2 Procurement organization
1871.202-3 Supporting organizations
1871.202-4 Center management.
1871.203 Buying team responsibilities.
1871.204 Small business set-asides.

Subpart 1871.3—Publicizing of Solicitation

1871.301 Publicizing policy.
1871.302 Publicizing procedure.

Subpart 1871.4—Request for Offer (RFO)

1871.401 Types of RFO's.
1871.401-1 Low, responsive, responsible offeror.
1871.401-2 Two-step competitive procurement.
1871.401-3 Competitive negotiated procurement not using qualitative criteria.
1871.401-4 Competitive negotiation using qualitative criteria.
1871.401-5 Noncompetitive negotiations.
1871.402 Preparation of the RFO.
1871.403 Offer preparation period and limitations.
1871.404 Protection of offers.
1871.405 Model contract.
1871.406 RFO by electronic bulletin board.
1871.406-1 Methods of disseminating information.
1871.406-2 Special situations.
1871.406-3 Publicizing and response time
1871.406-4 Method of soliciting offers.

Subpart 1871.5—Award

1871.501 Representations and certifications.
1871.502 Determination of responsible contractor.
1871.503 Negotiation documentation.
1871.504 Award documents.
1871.505 Notifications to unsuccessful offerors.
1871.506 Synopsis of award for subcontracting opportunities.
1871.507 Debriefing of unsuccessful offerors.

Subpart 1871.6—"Best Value Selection"

1871.601 General.
1871.602 Specifications for MidRange procurements.
1871.603 Establishment of evaluation criteria.
1871.604 Evaluation phases.
1871.604-1 Initial Evaluation.
1871.604-2 Determination of "Finalists."
1871.604-3 Discussions with "Finalists."
1871.604-4 Selection of "Best Value" Offer.
1871.605 Negotiation methods and procedures.
1871.606 Debriefings.

Authority: 42 U.S.C. 2473(c)(1).

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services from commercial sources as a pilot test procurement program.

Subpart 1871.1—General**1871.101 Purpose.**

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process. This will be a pilot test program in NASA.

1871.102 Authority.

(a) The Office of Federal Procurement Policy has provided authority for the National Aeronautics and Space Administration to conduct a pilot test of a new procurement process within the scope of this part.

(b) (1) NASA's MidRange Procurement procedures include the use of an Electronic Bulletin Board to replace synopses of contracting opportunities in the Commerce Business Daily and bid and proposal response times less than currently permitted by statute. Approval for these aspects of the MidRange Procedures requires Congressional approval which has not been granted as yet. These aspects of the MidRange Procedures will not be implemented until Congressional approval is granted and notice is published in the *Federal Register* and *Code of Federal Regulations*.

(2) NASA intends to implement these procedures on a parallel test basis; that is, an Electronic Bulletin Board will be established and used in addition to conventional Commerce Business Daily synopses for selected procurements. This will provide the Agency with valuable practical experience in the effective use of EBBs prior to full implementation of the EBB as the sole method of advising potential offerors of contracting opportunities. Notice of the use of the EBB will be published in the Commerce Business Daily (CBD).

1871.103 Applicability.

(a) This part applies to all acquisitions, as described in paragraph (b) of this section, conducted at the Marshall Space Flight Center.

(b) This part applies to all contract actions, other than construction and A&E, the aggregate amount of which is greater than the small purchases limitation (FAR part 13) and not more than \$500,000 in basic annual value. For services contracts, up to four annual options of not more than \$500,000 each are permitted where the option requirements are substantially the same as the basic requirement. For supply contracts, four options of not more than \$500,000 each are permitted but not more than \$500,000 in funding is to be required in any fiscal year. The total amount of the basic award plus options may not exceed \$2,500,000 in either the

case of supplies or services except as provided in paragraph (c) of this section.

(c) When the government estimate for the annual award amount exceeds the limits of 1871.103(b), the procurement will be processed under FAR and NFS procurement procedures applicable to large procurements (see FAR parts 14 and 15). When the estimate is within the range of paragraph (b) of this section, and the procurement was started using these procedures but the lowest offered prices exceed the MidRange ceiling, the procurement may continue under MidRange procedures, provided that:

(1) The price can be determined fair and reasonable,

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large procurements, and

(3) The procurement does not exceed \$750,000 on an annual basis or \$3,750,000 in total.

1871.104 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) *NASA Acquisition Bulletin Board* or *NABB* means an electronic bulletin board; i.e., a computer system through which users may access messages or documents available in electronic format.

(b) *MidRange procurement procedure* means a set of procedures within the authority of 1871.102 and the applicability of 1871.103.

(c) *Pilot test* means a test of MidRange procurement procedures conducted within the authority of 1871.102 and applicability of 1871.103.

(d) *Request for Offer (RFO)* means the solicitation method used to request offers for all authorized MidRange procurements.

(e) *Clarification and Discussion* are used as defined in FAR 15.601.

(f) *Negotiation* is used as defined in FAR 15.101 and includes bargaining as described in FAR 15.102.

1871.105 Policy.

(a) The procedures prescribed in this part shall be used for all procurements within the scope of part 1871 at the NASA pilot test field installation.

(b) Under MidRange procedures, cost or pricing data and certification thereof shall be in accordance with FAR 15.804.

(c) Procurements conducted under part 1871, unless otherwise properly restricted under the provisions of FAR part 6, are considered to be full and open competition after exclusion of sources in accordance with FAR 6.203, Set-asides for small business and labor

surplus area concerns, or full and open competition in accordance with FAR subpart 6.1. Procurements not conducted as small business set asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR part 6.

(d) Options may be included in the acquisition provided they conform to 1871.103(b) or do not exceed \$500,000 for the total requirement, options included.

(e) The appropriate part 1871 post-selection processes (negotiation, award, publication of award, and debriefing) may be used for Small Business Innovation Research (SBIR), broad agency announcement procurement actions, and Small Business Administration 8(a) sole source procurement actions within the applicability of 1871.103(b) to the extent applicable. Notwithstanding the threshold requirements set forth in 1871.103(b), SBIR Phase II contracts may be awarded in amounts not exceeding \$750,000. Contracts resulting from unsolicited proposals, evaluated under the provisions of FAR subpart 15.5, may be awarded using MidRange procedures, if they meet the threshold requirements.

(f) The NABB will be used to the maximum extent practicable to disseminate advance procurement information and transact part 1871 procurements.

(g) Use of locally generated forms are encouraged where they will contribute to the efficiency and economy of the process. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.406).

Subpart 1871.2—Planning and Requirements Process**1871.201 Use of buying team.**

MidRange procedures are based on the use of a buying team to conduct the procurement. The concept is to designate individuals who are competent in their respective functional areas, provide those individuals with the basic authority to conduct the procurement and hold them accountable for the results. The buying team will normally consist of one technical member and one procurement member, but may be augmented with additional members as desired. Personnel providing normal functional assistance to the team (e.g., legal, financial) will not be considered a part of the team unless so designated. To function properly, the team should be given the

maximum decision authority in matters related to the procurement. When higher level management approvals remain essential, it will be incumbent upon the functional team member to obtain such approvals. The team may accept, as final, the decision of the responsible buying team member.

1871.202 Organizational responsibilities.

1871.202-1 Requiring organization.

The requirements organization will appoint, by name, the technical member of the buying team. This individual will normally be an end user or the one most familiar with the technical aspects of the requirement. The individual appointed, whatever the relationship with the procured item, is expected to totally fulfill the responsibilities to the buying team. If the requiring organization elects not to appoint a technical member to the buying team, standard interfaces and authorities applicable to large procurements will be used. The procedures in this part will be used to the extent practical; however, priority will be afforded to procurements fully using buying teams.

1871.202-2 Procurement organization.

The procurement organization shall appoint the procurement member of the buying team. This individual shall be a warranted contracting officer or a contract specialist with broad latitude to act for the contracting officer. The procurement member shall be the team leader with the ultimate responsibility to conduct the procurement.

1871.202-3 Supporting organizations.

Buying team members may require additional team members to perform specialized functions or to assist in the evaluation of offers. Requests for supporting members shall be made by the organization identifying the need for the support and directed to the appropriate management level in the supporting organization. Supporting team members, once designated for the team, shall fulfill all applicable responsibilities to the team as other members.

1871.202-4 Center management.

Center managers shall, to the maximum extent practical and consistent with their responsibilities to manage the Center mission, convey sufficient authority to members of the buying team to conduct the procurement. Administrative or technical approvals should be minimized, and where deemed essential, facilitated to the maximum extent practicable. Center managers should lend their full support to the

buying team should problems arise from the procurement.

1871.203 Buying team responsibilities.

(a) The buying team shall conduct the procurement in a manner that best satisfies the user requirements and meets the norms expected of a Government procurement. Team members should develop open communications, rely on decisions of other team members and meet their obligations to the team. The team will typically—

- (1) Refine the final specifications for the solicitations;
- (2) Decide the most appropriate solicitation method;
- (3) Establish milestones for the procurement;
- (4) Finalize the evaluation criteria;
- (5) Develop the RFO and model contract; and
- (6) Evaluate offers and determine the awardee.

(b) The buying team shall use a simplified procurement plan not subject to management review and approval.

(c) The procurement member of the buying team shall lead clarifications, discussions, negotiations, be the source selection official, and conduct debriefings.

1871.204 Small business set-asides.

(a) Except as provided in paragraph (b) of this section, each MidRange acquisition of supplies or services shall be reserved exclusively for small business concerns.

(b) The requirement for small business MidRange set-asides does not relieve the buying office of its responsibility to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and mandatory multiple award Federal Supply Schedule contracts.

(c) Each written solicitation under a small business MidRange set-aside shall contain the provision at FAR 52.219-6, Notice of Total Small Business Set-Aside.

(1) If the buying team procurement member determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the buying team need not proceed with the small business set-aside and may purchase on an unrestricted basis utilizing MidRange procedures. If the SBA procurement center representative disagrees with a buying team procurement member's decision not to proceed with a small

business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in FAR 19.505.

(2) If the buying team proceeds with the small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the procurement on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document in the file the reason for the unrestricted purchase.

Subpart 1871.3—Publicizing of Solicitation

1871.301 Publicizing policy.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

Use of the MidRange procedure is intended to streamline and expedite the acquisition process. Presolicitation publication requirements are streamlined; however, it is in the Government's interest to provide as much advance notice as possible of a pending acquisition in order for the Government to obtain maximum competition. As soon as practicable after a requirement has been finalized and before the RFO is ready for release, a notice of the anticipated procurement action shall be published on the NABB. The NABB has the capability to quickly communicate with the potential offerors on a solicitation through a "message board." The procurement team member can easily add messages that update the status of the RFO. If the RFO is going to be delayed, posting a brief message can avoid numerous telephone calls while still effectively informing potential offerors. Where possible, a forecast posting date should be added to the "message board".

1871.302 Publicizing procedure.

(a) Synopses are not to be sent to or published in the Commerce Business Daily.

(b) A separate presolicitation notice for each requirement shall be published on the NABB. The presolicitation notice shall be published prior to the actual release of the solicitation.

(c) The presolicitation notice, at a minimum, shall briefly: Describe the

requirement; state that the solicitation will be released via the NABB and that potential offerors will be responsible for downloading their own copy of the solicitation; state that hard copies of the solicitation shall be made subsequently available on request, but the closing date will be the same as that required for the NABB released solicitation; state the projected solicitation release date; provide notice that it is the offeror's responsibility to monitor the NABB for solicitation release as the solicitation will be released as soon as permissible whether prior or subsequent to the projected date; and identify the name and telephone number of a point of contact. The presolicitation notice shall only be updated to reflect significant changes to the original notice.

(d) The presolicitation notice described at paragraph (b) of this section shall not be published in the CBD but only on the NABB. The MidRange procedure shall ensure that a perpetual notice is published in the CBD to:

- (1) Alert potential offerors to the MidRange procedure in general; and
- (2) Provide instructions on how to access the NABB.

Subpart 1871.4—Request for Offer (RFO)

In MidRange procedures, solicitation of sources shall be accomplished by use of an RFO. The RFO will be solely a solicitation document incorporating only those elements of information required to solicit the offer. Offers will be provided on a model contract furnished with the RFO.

1871.401 Types of RFO's

The RFO may be used for all types of procurements that fall within the MidRange dollar values. The distinguishing difference will be the evaluation and award criteria specified in the RFO. This, in turn, will be driven by the buying team's decisions on the extent of discussion required, the amount of non-price factors that will influence the award and the amount of competition available. If the conditions in FAR 6.401(a) are met, the RFOs described in 1871.401-1 and 1871.401-2, of this section, shall be used. Once the evaluation and award criteria have been specified in the RFO, the procurement must conform to the procedures applicable to these criteria, unless changed by formal amendment to the RFO.

1871.401-1 Low, responsive, responsible offeror.

(a) *Policy.* RFO's specifying that award will be made to the responsive, responsible

offeror providing the most advantageous offer considering only price and price related factors shall comply with the requirements of FAR Part 14 that relate to Sealed Bidding.

(b) *Public opening of offers.* In accordance with FAR part 14, offers, whether received by facsimile or sealed envelope delivery, shall be publicly opened at the designated time and place. Interested members of the public will be permitted to attend the opening.

(c) *Abstracts of offers.* Offers shall be abstracted pursuant to FAR Part 14 and be available for public inspection. Locally generated forms, to facilitate electronic transcription, may be used. A summary abstract, containing offerors, prices and any essential information specific to that procurement, for unclassified acquisitions shall be posted on the NABB. A copy shall be maintained in the contract file in accordance with FAR 14.204.

§ 1871.401-2 Two-step competitive procurement.

(a) *Policy.* (1) RFO's may specify that evaluation and award may be conducted in two distinct steps, similar in concept to "Two Step Sealed Bidding". When it is desirable to award to the lowest, responsive, responsible offeror after determining that the initial technical proposal, or the negotiated revised technical proposal, is acceptable, the MidRange Two-Step process should be used.

(2) The procedures of FAR 14.503-2(a) shall be used once Step two of this process begins.

(b) *Procedures.* (1) The RFO shall request offerors to provide both a technical and a price proposal by the closing date specified. Price proposals are requested to ensure that they are accomplished in a timely manner and to reduce the time required for Step two.

(2) The technical proposal will be evaluated to determine if the product or service offered is acceptable. If the proposal does not meet the requirement, but is reasonably susceptible to being made acceptable, the buying team procurement member shall enter into discussions to request the offeror to submit additional clarifying or supplementing information to make it acceptable. This is not required if there are sufficient acceptable proposals to ensure adequate price competition under Step Two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest.

(3) After completion of discussions in accordance with paragraph (b)(2) of this section, the buying team shall afford all

offerors who have submitted acceptable proposals an opportunity, by a common date, to revise their price offers to reflect the results of discussions. Offerors with acceptable initial proposals shall also have the opportunity to revise their price offer, even though their proposal has not changed. No changes to technical proposals will be permitted during this process.

§ 1871.401-3 Competitive negotiated procurement not using qualitative criteria.

(a) *Policy.* (1) RFO's may provide for discussion of all aspects of the offer but award is based on the lowest price (or most probable cost) for the offer as negotiated. This method should be used when qualitative factors are not material in the award decision, but it is important to assure that technical offers and contract terms are fully compliant with the Government's needs. This method also permits direct discussion of price with offerors and is particularly appropriate when different approaches can be offered to satisfy the government's need.

(2) The RFO should reserve the right to award without discussions or make selection and conduct negotiations with the successful offeror, based on the initial evaluation of offers submitted. FAR 52.215-16 shall be amended at Center level to reflect this procedure.

(b) *Procedures.* (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified.

(2) The offer will be evaluated to determine if the product or service proposed meets the RFO requirements. If the offer does not meet the RFO requirements but is reasonably susceptible to being made acceptable, the buying team procurement member shall enter into discussions to request the offeror to submit additional clarifying or supplementing information to make it acceptable. Offerors may be afforded an opportunity to revise their offers. This is not required if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest.

(3) From among the acceptable technical offers received, the buying team may rank the offers based on price (or cost). These offers constitute the most probable winners of the contract. Only in exceptional cases will this number be less than two offers. The procurement buying team member shall succinctly record the basis for the decision and post the names of the "finalists" on the NABB.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

(4) The buying team will enter into negotiations with all of the "finalists" and may discuss any aspect of the offer. The objective of the negotiations should be to achieve revisions to the offer, consistent with the RFO, that are more favorable to the Government.

(5) Upon conclusion of negotiations with each offeror, the offeror shall be asked to submit a revised offer (in full or amended), reflecting the results of negotiations, that is sufficient for acceptance and immediate award of a contract. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision, giving due consideration to the extent of revision necessary. Award will be made to the offeror submitting the lowest evaluated price.

1871.401-4 Competitive negotiation using qualitative criteria.

(a) *Policy.* (1) MidRange procurements shall normally use the Best Value Selection (BVS) source selection method, prescribed in 1871.6 when it is desirable to base evaluation and award on a combination of price and non-price qualitative criteria.

(2) The RFO should reserve the right to award without discussions or make selection and conduct negotiations with the successful offeror, based on the initial evaluation of offers submitted. FAR 52.215-16 shall be amended at Center level to reflect this procedure.

(3) In exceptionally complex procurements where it is desirable to use a highly structured approach and multiple evaluators, a source selection method following the principles specified in NASA Source Evaluation Board Handbook, 1870.303, Appendix I, may be more appropriate than BVS. This may be appropriate in cases in which the following factors cannot be accommodated within the MidRange/BVS selection methodology: (i) The ability to predefine the value attributes that will constitute the discriminators among the offers; (ii) the complexity of the interrelationships that must be evaluated; (iii) the number of evaluators required to address the disciplines that will be involved in the offers; or (iv) the impact that the procurement may have on higher level mission management (level of selection official) or future procurements.

(4) A source selection process combining both of the above approaches shall not be used.

(b) *Procedures.* (1) The buying team will determine which of the source selection methodologies is most appropriate to the specific procurement.

(2) The team shall record its rationale for selecting the SEB methodology rather than BVS. Once this decision is made, the team shall no longer function as a MidRange buying team, but shall follow the instructions prescribed in the local procedures for the source selection method.

1871.401-5 Noncompetitive negotiations.

(a) *Policy.* (1) The RFO may be used as the solicitation method for non-competitive procurements.

(2) MidRange procedures may be used in non-competitive acquisitions to the extent they are applicable.

(b) *Procedures.* (1) Posting a "Notice of Procurement Action" on the NABB meets the requirement of FAR 5.201 and complies with the notice required by the Competition in Contracting Act.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

(2) The buying team shall require submission of certified cost and pricing data in accordance with FAR 15.804-2.

(3) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

1871.402 Preparation of the RFO.

(a) The RFO form will be an electronically produced format providing for merged format and text. The form shall provide all standard information required for the offeror to submit an offer.

(b) The RFO contains space for all necessary additional instructions to offerors. As a minimum, the RFO shall contain the following:

(1) Incorporation by reference of required standard provisions and clauses.

(2) A provision notifying offerors that standard Representations and Certifications will be required from the successful offeror prior to award, or from all offerors selected for parallel negotiations.

(3) Evaluation and award criteria.

(4) A provision requiring offerors to submit offers on an attached model contract.

(c) Requirements for the content and format of the offer should be the minimum required to provide for proper evaluation. Offerors' formats should be allowed to the maximum extent possible.

(d) Facsimile offers, defined by FAR 14.202-7, shall normally be authorized for MidRange procurements. In special circumstances, the buying team may elect to require only original offers.

1871.403 Offer preparation period and limitations.

The buying team should establish deadlines for receipt of offers based on an assessment of the minimum amount of time required to respond to the solicitation. The time required will depend on the complexity of the requirement and amount of cost and technical information required to be submitted. The information required shall be limited to the amount required to determine technical acceptability and price reasonableness. The offer preparation period established in the RFO shall not be less than 15 calendar days unless the procurement is urgent and the reasons for urgency are documented in the contract file.

1871.404 Protection of offers.

A facsimile machine(s) shall be dedicated for receipt of offers and placed in a secure location where offers received on it can be safeguarded. All offers submitted shall be recorded, sealed in an envelope marked with the RFO number and taken to the buying team procurement member. Facsimile attendants shall make a good faith effort to inspect the document for completeness and legibility. If the attendant believes there are missing or illegible pages, the document will be promptly referred to the buying team procurement member for notification to the offeror that it should resubmit the offer. The Government shall not assume responsibility for proper transmission.

1871.405 Model contract.

MidRange procedures uses a simplified contract format. The simplified contract format may be used with any type of contract, as long as the provisions appropriate to the contract type are included.

1871.406 RFO by electronic bulletin board.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

1871.406-1 Methods of disseminating information.

(a) In accordance with 1871.302(b), advance notices of solicitations for MidRange Procurements may be posted on the NABB. The advance notice should indicate the nature of the procurement and the anticipated date

the solicitation will be posted on the NABB.

(b) Solicitations for MidRange Procurements shall be made available on the NABB. Priority shall be given to users of the NABB to download the RFO. Paper copies of such solicitations will be furnished on request as described for other types of solicitations in FAR 5.102. Paper copies shall be mailed within 5 working days from the date the RFO is posted on the NABB or receipt of the request, whichever is later.

(c) Solicitations available on the NABB are exempt from the requirement in FAR 14.203-1 that delivery of the solicitations be made pursuant to FAR 14.205.

(d) For the purposes of FAR 15.402(a), a solicitation posted on the NABB is a written solicitation.

(e) Solicitations posted on the NABB in accordance with these regulations are exempt from the requirement in FAR 15.408(a) to issue solicitations using the procedures in FAR part 5.

1871.406-2 Special situations.

Notices for special situations as described in FAR 5.205 involving MidRange Procurements must be published in the Commerce Business Daily. Such special situations include R&D sources sought, intent to sponsor or change the mission of an Federally Funded Research and Development Center, effort to locate commercial sources under OMB Circular A-76, and section 8(a) competitive national buy acquisitions.

1871.406-3 Publicizing and response time.

In accordance with 1871.403, contracting activities shall allow at least 15 calendar days response time for receipt of offers from the date of posting of the solicitation on the NABB. Contracting activities shall check the NABB immediately after uploading a solicitation to assure that the solicitation is properly posted.

1871.406-4 Method of soliciting offers.

(a) Solicitations for MidRange Procurements shall be generated in, or converted to, electronic files and uploaded to the NABB.

(1) Each contracting activity will designate two or more individuals to perform the upload and check the uploaded files to assure that the data was not corrupted during transmission.

(2) Each solicitation uploaded to the NABB shall be accompanied by a title, which shall include a very brief description of the nature of the procurement, the opening and closing dates for the solicitation, and the

product/service classification code (see FAR 5.207(g)). This title is not intended to provide the amount of detail used in synopses published in the Commerce Business Daily, since the entire solicitation is available for immediate review.

(b) Amendments to a solicitation posted on the NABB shall be uploaded to the NABB, and the solicitation and amendment number shall be added to the index of amended solicitations. When an interested part, i.e., one that has downloaded the solicitation from the NABB, next contacts the NABB, the party will receive notification that an amendment exists.

Subpart 1871.5—Award

1871.501 Representations and certifications.

Upon determination of the successful offer, the buying team procurement member will determine if the offeror has on file valid Representations and Certifications. If the offeror has not completed the required forms, or they have expired, the offeror will be requested to provide the forms promptly. Should the offeror fail to provide the required Representations and Certifications or fail to meet a required condition, the buying team may reject the offer and proceed to the next highest ranked offeror who is responsive and responsible.

1871.502 Determination of responsible contractor.

Contractor responsibility shall be determined in accordance with FAR part 9.

1871.503 Negotiation documentation.

The prenegotiation memorandum, if required, and the results of negotiation will be in abbreviated form and will be approved by the buying team.

1871.504 Award documents.

Contract award shall be accomplished by Contracting Officer execution of the contract document and providing a paper copy to the successful offeror. If facsimile documents were used in the evaluation process, the successful offeror may be required to execute original copies of the contract to facilitate legibility during the administration phase of the contract.

1871.505 Notifications to unsuccessful offerors.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

For solicitations that were posted on the NABB, a notice of award in accordance with FAR 15.1001 may be posted on the NABB in lieu of furnishing a post-award notice to each unsuccessful offeror.

1871.506 Synopsis of award for subcontracting opportunities.

[Implementation of the NASA Acquisition Bulletin Board aspects of this procedure are dependent upon Congressional approval as discussed in 1871.102(b).]

The award will be synopsisized for subcontracting opportunities on the NABB for 7 calendar days after posting. The information required by FAR 5.206 shall be included in the synopsis.

1871.507 Debriefing of unsuccessful offerors.

If the procurement method used provides for a debriefing of unsuccessful offerors, the procedures applicable to that selection process shall be used in the debriefing. The procurement buying team member shall conduct debriefings.

Subpart 1871.6—"Best Value Selection"

1871.601 General.

(a) Best Value Selection (BVS) seeks to select an offer based on the best combination of price and qualitative merit of the offers submitted and reduce the administrative burden on the offerors and the Government.

(b) BVS takes advantage of the lower complexity of MidRange procurements and predefines the value characteristics which will serve as the discriminators among offers. It eliminates the use of area evaluation factors and the highly structured scoring.

1871.602 Specifications for MidRange procurements.

Best Value Selection refines the traditional approach to preparing specifications. BVS envisions that the specification will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's need by a separate set of value characteristics which establish what the Government considers to be valuable in an offer. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

1871.603 Establishment of evaluation criteria.

(a) The requiring organization will provide, along with the specification, a

list of value characteristics against which the offers will be judged. There is no limit to the number or the type of characteristics that may be specified. The only standard will be whether the characteristic is rationally related to the need specified in the specification. Characteristics may include such factors as improved reliability, innovativeness of ideas, speed of service, demonstrated delivery performance, higher speeds, ease of use, qualifications of personnel, solutions to operating problems, level of service provided on previous similar contracts, or any of numerous other characteristics that may be of value to the Government in satisfying its need.

(b) Cost and technical will be considered equal in importance. The value characteristics will not be assigned weights. Where certain characteristics are of major importance to the Government, they should be identified as primary value characteristics to permit the offerors to better propose a product or service that meets our needs.

(c) Both general and specific characteristics may be listed in the RFO. All subsequent evaluations will consider these characteristics when determining the finalists or making the final selection for award. Additional characteristics, not listed in the RFO, shall not be used as a basis for discriminating among proposals.

1871.604 Evaluation phases.

1871.604-1 Initial evaluation.

(a) Offers will be reviewed to determine if all required information has been provided and the offeror has made a reasonable attempt to present an acceptable offer. Offerors may be contacted only for clarification purposes during the initial evaluation. No further evaluation shall be made of any offer that is deemed unacceptable because:

(1) It does not represent a reasonable effort to address itself to the essential requirements of the RFO or clearly demonstrates that the offeror does not understand the requirements of the RFO; or

(2) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(3) In R&D procurement, a substantial design drawback is evident in the proposal and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new proposal.

(b) Offerors determined not to be acceptable shall be notified of their

rejection and the reasons therefor and excluded from further consideration.

(c) *Documentation.* If it is concluded that all offers are acceptable, then no documentation is required and evaluation proceeds. If one or more offers are not acceptable, the procurement member of the team will notify the offeror of the rejection and the reasons therefor. The documentation should consist of one or more succinct statements of fact that show the offer is not acceptable.

1871.604-2 Determination of "finalists."

(a) All acceptable offers will be evaluated against the specifications and the value characteristics. Based on this evaluation, the team will identify the finalists from among the offers submitted. Finalists will include all offers having a reasonable chance of being selected for final award, as prescribed in 1815.613-71(b)(4)(i) for competitive range. Generally, finalists will include the offer having the best price (or lowest most probable cost) and the offer having the highest qualitative merit, plus those determined to have the best combination of price and merit. Offers not qualifying as finalists will be excluded from the balance of the evaluation process.

(b) Whenever possible, the buying team will conduct parallel negotiations of complete contracts with all finalists as discussed in 1871.604-5. This approach, which provides for the negotiation of definitive contracts prior to selection, serves to maintain the competitive environment among offerors throughout the acquisition cycle.

(c) In some cases, the buying team may choose to conduct discussions with the finalists as opposed to conducting parallel negotiations of complete contracts. This may be appropriate when: (1) certain aspects of offers are unclear, and clarifying the offers could determine that a finalist actually has no reasonable chance of being selected for final award; or (2) the finalists are so numerous that negotiating complete contracts with all finalists is not practical, considering the time and resources available. Discussions shall be conducted in accordance with 1871.604-3.

(d) The buying team may choose to conduct parallel negotiations with all acceptable offerors without a determination of finalists. This could particularly apply where few offers were received.

(e) The selection official may elect to make selection in lieu of determining finalists, provided it can be clearly demonstrated that (1) Negotiation of an

initial offer(s) will result in the best value for the Government, considering both price and non-price qualitative criteria; and (2) discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to the best value offer(s).

(f) *Documentation.* If finalists are identified as discussed in paragraphs (b) and (c) of this section, the documentation expected and required to result from this phase of evaluation is approximately one-quarter of a page for each finalist. The documentation shall succinctly describe how the value characteristics in the RFO were provided by the offeror and cost/price considerations that caused the offer to qualify as a finalist. The evaluator(s) shall not be required to justify why other offers provided less qualitative merit. It is expected that, should the decision be challenged, the documented reason for selection, when compared with the non-selected offer, shall clearly demonstrate the difference that resulted in non-selection. It is expected and recommended that all informal worksheets used in the evaluation process be included in the official contract file for use in any debriefings requested. When selection of the successful offeror(s) is made, the buying team shall document the selection in accordance with 1871.604-4.

(g) The names of offerors determined to be finalists or selected for negotiations and/or final contract award will be posted on the NABB. This will serve as notification to those offerors that were not selected for further evaluation.

1871.604-3 Discussions with "finalists."

(a) The procurement team member shall lead discussions with each finalist. The discussions are intended to assist the buying team in fully understanding each finalist's offer and to assure that the meanings and points of emphasis of the RFO have been adequately conveyed to the finalists so that all are competing equally on the basis intended. Care must be exercised to ensure these discussions adhere to the guidelines set forth in 1815.613-71(b)(5) for the applicable contract type. Technical transfusion, technical leveling, and auction techniques are prohibited. It is expected that these discussions will be conducted on an informal basis with each finalist.

(b) After completion of discussions, each finalist shall be afforded an opportunity to revise its offer to support and clarify its offer. A reasonable amount of time (normally less than 5 working days) will be afforded for the

revision. The amount of time given shall be the same for each finalist.

1871.604-4 Selection of "Best Value" offer.

(a) The procurement team member shall be the source selection official.

(b) The BVS source selection is based on the premise that, if all offers are of approximately equal qualitative merit, award will be made to the offer with the lowest evaluated price (fixed price contracts) or the Government-determined most probable cost (cost type contracts). However, the Government will consider awarding to an offeror with higher qualitative merit if the difference in price is commensurate with added value. Conversely, the Government will consider making award to an offeror whose proposal has lower qualitative merit if the price (or cost) differential between it and other proposals warrant doing so.

(c) *Documentation.* Rationale for selection of the successful offeror shall be recorded in a selection statement which succinctly records the value characteristics upon which selection was made. The statement need not and should not reveal details of the successful offer that are proprietary or business sensitive. Since the value characteristics are expressed in performance terms, the reasons for selection can focus on results to be achieved, rather than the detailed approach the offeror will use. The statement shall also comment on the rationale used to equate cost and qualitative merit. Little or no comment would be required when the selected offeror possessed the highest merit and lowest price. When a marginal analysis is made between value characteristics and price—in most cases this will be a subjective, integrated assessment of all pertinent factors—specific rationale should be provided to the extent possible. It is expected that the statement will not ordinarily exceed one page. Where the procurement is closely contested, it would be prudent to expand on the rationale provided in the statement.

(d) The name of the offeror(s) selected for award and the selection statement shall be posted on the NABB, and this will serve as a notification to those offerors that were not selected.

1871.605 Negotiation methods and procedures.

(a) *Policy.*

(1) The buying team may choose to initiate parallel negotiations of complete contracts with those offerors determined to be finalists or with all acceptable

offerors. Parallel negotiation may also be used where more than one offeror is selected for negotiations after discussions. Use of parallel negotiations takes advantage of the competitive atmosphere and the responsiveness of offerors in completing negotiations. It also provides the selection official a higher confidence in the offer, since only the contracting officer's signature is required to make the offer a binding contract.

(2) When the selection official has chosen to make selection in lieu of conducting parallel negotiations, negotiations may be conducted with the successful offeror(s) to resolve any open issues necessary to effect a binding contract(s). This may be typical of R&D and service contracts where the Government desires to negotiate changes in emphasis or orientation in a otherwise superior offer(s).

(b) *Procedure.* (1) Upon conclusion of parallel negotiations with each offeror, the offeror shall be asked to submit a revised offer (in full or amended) reflecting the results of the negotiations and including the offeror's signature on the negotiated contract. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each offeror. Upon receipt of all offers, the procurement team member of the buying team shall make selection and document as required in 187.604-4(c). Upon selection, the contracting officer shall execute the selected contract.

(2) If negotiation is conducted after selection, the buying team shall first select the offer and document as required in 1871.604-4(c), then negotiate the terms of the contract. The offeror shall be asked to submit a revised offer reflecting the results of negotiation, and including the offeror's signature on the negotiated contract. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. After receipt of the revised offer, the contracting officer shall execute the contract.

1871.606 Debriefings.

In addition to posting the selection statement on the NABB, a debriefing will be provided by the buying team procurement member to any offeror submitting a written request. The debriefing will concentrate on the reasons why the successful offeror was selected. If the contract is unclassified, the debriefer may reveal any aspect of the contract and how it relates to the merits used to select the successful offer. If the successful offer had value characteristics which are proprietary or

business sensitive and had an impact on the selection, the debriefer should so state and summarize the results which are expected to accrue to the Government. The debriefer shall not divulge the details of the proprietary or business sensitive information.

[FR Doc. 93-25647 Filed 10-20-93; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in United States waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1993 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1993 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 371.21(b)(1).

ADDRESSES: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (206) 526-6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the

United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, an emergency interim rule was promulgated at 51 FR 23420, June 27, 1986 (codified at 50 CFR part 371) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The emergency interim rule was effective on June 22, 1986, and remains in effect until modified, superseded, or rescinded. It applies to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The emergency interim rule closes the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotline numbers described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the Federal Register as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1993 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1993 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220-22.

Order No. 1993-1: Issued 1:00 p.m., July 16, 1993

All-citizen Fishery:

Area 4 and Area 3 north of 48° 00' 15" N.—The Fraser Panel relinquished regulatory control of troll fishing effective July 18 through August 7, 1993.

Order No. 1993-2: Issued 12:20 p.m., July 20, 1993

Referred only to fishing in Canadian area Panel Waters.

Order No. 1993-3: Issued 1:10 p.m., July 23, 1993

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets open 12:00 p.m., July 26 to 12:00 p.m., July 30.

Order No. 1993-4: Issued 2:05 p.m., July 30, 1993

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnet extended 12:00 p.m., July 30 to 12:00 p.m., August 6.

Areas 7 and 7A—Net fishing open 5:00 a.m., August 2 to 9:00 a.m., August 3.

All-citizen Fishery:

Areas 7 and 7A—Reefnets open 5:00 a.m. to 9:00 p.m., August 1 and 3.

Gillnets open 12:00 p.m. to 12:00 a.m., August 3. Purse seines open 5:00 a.m. to 9:00 p.m., August 4.

Order No. 1993-5: Issued 11:50 a.m., August 2, 1993

All-Citizen Fishery:

Areas 6, 7 and 7A—Reefnets open 5:00 a.m. to 9:00 p.m., August 5.

Order No. 1993-6: Issued 12:45 p.m., August 6, 1993

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Gillnets extended 12:00 p.m., August 6 to 12:00 p.m., August 11.

Areas 6, 7, and 7A—Net fishing open 6:00 p.m., August 8, to 9:00 p.m., August 10.

All-citizen Fishery:

Areas 6, 7 and 7A—Gillnets open 12:00 p.m., August 11 to 7:00 a.m., August 12.

Purse seines open 5:00 a.m. to 9:00 p.m., August 12.

Areas 4 and 3 north of 48° 00' 15" N—Commerical trolling open 12:01 a.m., August 8 until further notice.

Order No. 1993-7: Issued 12:25 p.m., August 10, 1993

Treaty Indian Fishery:

Areas 4B, 5 and 6C—Drift gillnets extended 12:00 p.m., August 11 to 12:00 p.m., August 14.

Order No. 1993-8: Issued 11:55 a.m., August 12, 1993

Treaty Indian Fishery:

Areas 4B, 5 and 6C—Drift gillnets extended 12:00 p.m., August 12 to 12:00 p.m., August 18.

Areas 6, 7, and 7A—Net fishing open 11:00 a.m., August 13 to 11:00 a.m.,

August 17.

Order No. 1993-9: Issued 12:05 p.m., August 13, 1993

All-citizen Fishery:

Areas 6, 7, and 7A—Reef nets open 5:00 a.m. to 9:00 p.m., August 15 and 17.

Gillnets open 12:00 p.m., August 18 to 7:00 a.m., August 18.

Purse seines open 5:00 a.m. to 9:00 p.m., August 18 and 19.

Order No. 1993-10: Issued 12:20 p.m., August 17, 1993

Treaty Indian Fishery:

Areas 4B, 5 and 6C—Drift gillnets extended 12:00 p.m., August 18 to 12:00 p.m., August 21.

All-citizen Fishery:

Areas 6, 7, and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 18 and 19. Purse seines cancel 5:00 a.m. to 9:00 p.m., August 19 opening.

Order No. 1993-11: Issued 10:30 a.m., August 19, 1993

Treaty Indian Fishery:

Areas 6, 7 and 7A—Net fishing open 6:00 p.m., August 19 to 9:00 p.m., August 21.

Order No. 1993-12: Issued 1:15 p.m., August 20, 1993

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets extended 12:00 p.m., August 21 to 12:00 p.m., August 28.

Areas 6, 7, and 7A—Net fishing extended 9:00 p.m., August 21 to 9:00 a.m., August 22.

All-citizen Fishery:

Areas 7 and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 21, 22, and 24.

Gillnets open 12:00 p.m. to 12:00 a.m., August 22 and 7:00 p.m., August 23 to 9:00 a.m., August 24.

Purse seines open 5:00 a.m. to 9:00 p.m., August 23 and 24.

Order No. 1993-13: Issued 1:30 p.m., August 24, 1993

Treaty Indian Fishery:

Areas 6, 7 and 7A—Net fishing open 9:00 p.m., August 25 to 9:00 p.m., August 28.

All-citizen Fishery:

Areas 7 and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 25 and 26.

Gillnets open 7:00 p.m., August 24 to 9:00 a.m., August 25.

Purse seines open 5:00 a.m. to 9:00 p.m., August 25.

Order No. 1993-14: Issued 4:05 p.m., August 27, 1993

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets

extended 12:00 p.m., August 28 to 12:00 p.m., September 5.
Areas 6, 7, and 7A—Net fishing extended 9:00 p.m., August 28 to 9:00 a.m., August 29 and re-open 9:00 p.m., August 30 to 9:00 p.m., August 31.
All-citizen Fishery:
Areas 7 and 7A: Reefnets open 5:00 a.m. to 9:00 p.m., August 28, 29, and 30.
Gillnets open 12:00 p.m., August 29 to 9:00 a.m., August 30.
Purse seines open 5:00 a.m. to 9:00 p.m., August 30.
Order No. 1993-15: Issued 5:00 p.m., August 30, 1993
Referred only to fishing in Canadian area Panel Waters.
Order No. 1993-16: Issued 12:50 p.m., August 31, 1993
Treaty Indian Fishery:
Areas 6, 7, and 7A—Net fishing extended 9:00 p.m., August 31 to 9:00 a.m., September 3.
All-citizen Fishery:
Areas 7 and 7A—Gillnets open 12:00

p.m., September 3 to 9:00 a.m., September 4.
Order No. 1993-17: Issued 12:25 p.m., September 1, 1993
Referred only to fishing in Canadian area Panel Waters.
Order No. 1993-18: Issued 12:30 p.m., September 3, 1993
Treaty Indian Fishery:
Areas 6, 7, and 7A—Net fishing open 5:00 a.m., September 6 to 8:00 a.m., September 7.
All-citizen Fishery:
Areas 7 and 7A: Gillnets extended 9:00 a.m., September 4 to 7:00 p.m., September 5.
Purse seines open 8:00 a.m. to 9:00 p.m., September 7.
Order No. 1993-19: Issued 10:00 a.m., September 8, 1993
Referred only to fishing in Canadian area Panel Waters.
Order No. 1993-20: Issued 12:45 p.m., September 10, 1993
Treaty Indian Fishery:

Areas 4B, 5 and 6C—Relinquish regulatory control effective 11:59 p.m., September 11.
Order No. 1993-21: Issued 12:35 p.m., September 14, 1993
Referred only to fishing in Canadian area Panel Waters.
Classification
This action is taken under authority of 50 CFR 371.21 (51 FR 23420, June 27, 1986).
List of Subjects in 50 CFR Part 371
Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.
Authority: 16 U.S.C. 3636(b).
Dated: October 18, 1993.
David S. Crestin,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 93-25923 Filed 10-20-93; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 58, No. 202

Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-92-AD]

Airworthiness Directives; British Aerospace Model BAe 146 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 all British Aerospace Model BAe 146 series airplanes equipped with Dunlop brakes. This proposal would require that the brake wear limits prescribed in this proposal be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by the proposed AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

DATES: Comments must be received by December 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-92-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

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 93-NM-92-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. 93-NM-92-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid

leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of allowable wear limits for all brakes installed on transport category airplanes. The FAA and the Aerospace Industries Association (AIA) jointly developed a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. It should be noted that this worn brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. The guidelines for validating brake wear limits allow credit for use of reverse thrust with a critical engine inoperative to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that airframe manufacturers of transport category airplanes:

(1) Determine required adjustments in allowable wear limits for all of its brakes in use,

(2) Schedule dynamometer testing to validate wear limits as necessary, and

(3) Submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

British Aerospace has conducted worn brake rejected takeoff (RTO) dynamometer testing and analyses on various brakes installed on Model BAe 146 series airplanes. Based on the results of that testing and analyses, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manual for Model BAe 146 series airplanes equipped with Dunlop brakes are acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Consequently, the FAA finds that the specified maximum wear limits for those brakes must be incorporated into the FAA-approved maintenance inspection program.

The FAA has determined that, in order to prevent loss of brake effectiveness during a high energy RTO, the following maximum brake wear limits are necessary for Model BAe 146 series airplanes equipped with Dunlop brakes:

Brake type	Brake part no.	Maximum brake wear limit (inch)—lineal axial wear as measured by the brake wear pin (inch)
Carbon	AHA 1412/13	2.34" (1.5" original wear pin setting + 0.84" spacer).
Carbon	AHA 1558/59	2.34" (1.5" original wear pin setting + 0.84" spacer).
Steel	AHA 1455/56	0.866".

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require the incorporation of the specified maximum wear limits for the specified brakes into the FAA-approved maintenance inspection program.

The FAA estimates that 45 airplanes of U.S. registry and 6 U.S. operators that would be affected by this proposed AD. Although the proposed rule would require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs are involved; such actions are currently a part of the normal maintenance program. However it is estimated that it would require 20 work hours, at an average labor rate of \$55 per work hour, for each operator to incorporate the requirement into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the AD on U.S.

operators is estimated to be \$6,600, or \$1,100 per operator. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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.

DUNLOP BRAKES

Brake type	Brake part no.	Maximum brake wear limit (inch)—lineal axial wear as measured by the brake wear pin (inch)
Carbon	AHA 1412/13	2.34" (1.5" original wear pin setting + 0.84" spacer).
Carbon	AHA 1558/59	2.34" (1.5" original wear pin setting + 0.84" spacer).
Steel	AHA 1455/56	0.866".

Note 1: The measuring instructions for carbon and steel brake thicknesses and instructions for setting the wear pin length specified in the BAe 146 AMM, Section 32-42-24, or in the Dunlop CMM, Section 32-42-58, are based currently on the minimum brake thicknesses specified in the table.

(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 FAR 21.197 and 21.199 to operate the airplane to a location where the

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket 93-NM-92-AD.
Applicability: All Model BAe 146 series airplanes equipped with Dunlop brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in the following table into the FAA-approved maintenance inspection program and comply with these measurements thereafter.

requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-25847 Filed 10-20-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-148-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 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 Fokker Model F-28 Mark 0100 series airplanes. This proposal would require inspection, necessary repair, and modification of the engine mount shear shelf webs. This proposal is prompted by reports of interference between the engine mount shear shelf web and the fixed cowl mid and aft hooks, which caused fatigue cracks in the web. The actions specified by the proposed AD are intended to prevent fatigue cracking and other damage to the structure of the shear shelf web, which subsequently could lead to loss of the engine mounting structure.

DATES: Comments must be received by December 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:**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 93-NM-148-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. 93-NM-148-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F-28 Mark 0100 series airplanes. The RLD advises that interference has been found to be possible between the fixed cowl mid and aft hooks, and the engine mount shear shelf web. Aside from a noticeable increase in vibration and the resulting noise, this interference can cause cracking and other damage to the shear shelf web, which can adversely affect the fatigue life of the shear shelf web. Such fatigue, if not corrected in a timely manner, can lead to structural failure of the shear shelf web and subsequent loss of the engine mounting structure.

Fokker has issued Service Bulletin SBF100-71-012, dated February 7, 1992, that describes procedures for modifying the engine mount shear shelf web. The modification entails reinforcing the web to eliminate the interference problems. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92-032, dated February 25, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to detect cracking and other damage of the engine mount shear shelf webs around the areas of the fixed cowl mid and aft hooks. Cracked or damaged parts would be required to be repaired in accordance with the applicable structural repair manual.

This proposed AD also would require modification of the engine mount shear shelf webs to eliminate the interference problems. The modification would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 120 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would cost approximately \$2,390 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$179,800, or \$8,990 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 93—NM—148—AD.

Applicability: Model F-28 Mark 0100 series airplanes; having serial numbers 11244 to 11308 inclusive, 11310, 11312, 11313, 11314, 11316, 11321, 11328, and 11329; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and other damage to the engine mount shear shelf web, which subsequently could lead to loss of the engine mounting structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight hours or within 90 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Conduct a detailed visual inspection to detect cracking or other damage of the engine mount shear shelf webs around the areas of the fixed cowl aft hook centerline and the fixed cowl mid hook centerline. If cracking or damage is detected, prior to further flight, repair it in accordance with the Fokker F-28 Mark 0100 Structural Repair Manual.

Note 1: Location of the inspection area is detailed in Figure 2 of Fokker Service Bulletin SBF100-71-012, dated February 7, 1992.

(2) Modify (reinforce) the engine mount shear shelf webs in accordance with Part 1 or Part 2, as applicable, of the Accomplishment Instructions of Fokker

Service Bulletin SBF100-71-012, dated February 7, 1992.

(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, FAA, Transport Airplane Directorate, ANM-113. 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 FAR 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 October 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-25846 Filed 10-20-93; 8:45 am]

BILLING CODE 4810-13-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Alabama Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Alabama on October 1, 1993. The amendment would revise the eligibility date for abandoned mine land reclamation from August 3, 1977, to November 5, 1990, and would affect both nonemergency and emergency reclamation. The amendment is intended to meet the requirements of title IV and the Federal regulations.

This document sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on November 22, 1993. Comments received after that date will not necessarily be considered in the decision process. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on November 15, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on November 5, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Birmingham Field Office.

Birmingham Field Office, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209, Telephone: (205) 290-7287

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130, Telephone: (205) 242-8265.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, (205) 290-7283.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Title IV of SMCRA, Public Law 95-87, 30 U.S.C. 1202 et seq., establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101-508, title VI, subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 et seq., to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1997. These include interim program sites where bond forfeiture proceeds were insufficient for adequate

reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provide that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **ADDRESSES**. Subsequent actions taken with regard to the Alabama Plan can be found at 30 CFR 901.25.

The Secretary has adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated October 1, 1993, Alabama submitted a reclamation plan amendment to OSM (Administrative Record No. AL 0504). This formal amendment request was preceded by a letter dated July 12, 1993, which requested that the Alabama Plan be updated by revision. OSM determined on September 17, 1993, that the proposed revision represented a major change in the scope of the AMLR program and would necessitate processing as a formal Plan amendment. The proposed amendment consists of revised narratives to replace portions of three sections of the approved Alabama Plan as provided for by 30 CFR 884.13. Specifically, the Alabama Plan is being revised to modify the eligibility date for AMLR reclamation from August 3, 1977, to November 5, 1990. This change will be applicable to both nonemergency and emergency AMLR project sites and will allow reclamation of sites mined for coal after August 3, 1977.

III. Public Comment Procedures

In accordance with the provision of 30 CFR 884.14, OSM is now seeking comments on whether the amendment proposed by Alabama satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearings

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. November 5, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepared adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register**.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231-1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface Mining, Underground mining.

Dated: October 15, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.
[FR Doc. 93-25850 Filed 10-20-93; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 156

[CGD 90-071a]

Overfill Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting and availability of revised regulatory evaluation.

SUMMARY: The Coast Guard is establishing regulations to require overfill devices for tank vessels that carry oil as their primary cargo, as mandated by the Oil Pollution Act of 1990 (OPA 90). A public meeting will be held to discuss the applicability of, and methods of compliance with, this rulemaking. The Coast Guard has also placed a revised Regulatory Evaluation (RE), based on changes and additional data, in the docket for public comment.

DATES: A public meeting will be held between 1 p.m. and 4 p.m., on Wednesday, November 17, 1993. Comments must be received on or before November 22, 1993.

ADDRESSES: The meeting will be held at the U.S. Coast Guard Headquarters, room 2200, 2100 Second Street, SW., Washington, DC 20593-0001.

Comments concerning the public meeting or the revised RE may be mailed to the Executive Secretary, Marine Safety Council, (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For more information, the telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Project Manager, Oil Pollution Act (OPA 90) Staff, at (202) 267-6220.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90-071a) and the specific section of the RE to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the RE in view of the comments.

Drafting Information

The principal persons involved in drafting this document are Mr. Randall N. Crenwelge, Project Manager, and Ms. Pamela Pelcovits, Project Counsel, OPA 90 Staff (G-MS).

Background and Discussion

On January 12, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Overfill Devices," in the *Federal Register* (58 FR 4040). Information concerning the statutory and technical basis for the proposed regulations are included in the preamble of that document.

The Coast Guard received 32 letters commenting on the NPRM. At that time, a public hearing was not requested. Comments to the NPRM both favored and discouraged the use of high level indicating devices. Since the close of the comment period, the Coast Guard has received several questions from representatives of the marine industry. Industry is concerned with the Coast Guard's final decision on whether to allow high level indicating devices or stick gauges to serve as alternative overfill devices under proposed 33 CFR 155.480.

The Coast Guard has reviewed its records of tank overfills occurring in 1990 and 1991. The data show that inattentive or unskilled personnel are the most often reported causes of overfill spills on barges. The data suggest that stick gauges would not have prevented any of those tank overflows.

For example, one overfill incident occurred because the tankerman had left the barge to have lunch. Another overfill incident occurred when the tankerman was busy sounding tanks at the forward end of the barge. A tank overfilled at the aft end of the barge because the tankerman was not aware of its oil level.

Since data shows that sole reliance on stick gauges is unwarranted, the Coast Guard plans to require an audible alarm whether or not a high level indicating device is used. The alarm requirement will address problems with busy or inattentive tankermen. The Coast Guard does, however, agree with those comments suggesting that one alarm, rather than two alarms, will be sufficient.

Other segments of the marine industry have contacted the Coast Guard to discuss applicability and exemption issues. The NPRM proposed to exclude only secondary cargo carriers (such as offshore supply vessels (OSVs) and certain fish tenders) and vessels with cargo carrying capacities of less than 40 cubic meters (250 barrels).

After a review of data showed that only a small amount of cargo oil is spilled from vessels with a cargo carrying capacity of less than 1,000 cubic meters, the Coast Guard has decided to raise the applicability threshold for oil tankers (as defined in 33 CFR 151.05) to those with a capacity of 1,000 cubic meters (approximately 6,290 barrels) or more.

Based on comments, the Coast Guard also has decided to exempt existing vessels which will be phased-out over the next five years. It agrees that this exemption will eliminate the unrecoverable costs of upgrading devices on vessels which will soon be taken out of service.

In response to this public input, the Overfill rulemaking and the accompanying preliminary RE have been revised. A copy of the revised RE has been placed in the public docket (CGD 90-017a) and is available for inspection or copying at the address listed herein. The Coast Guard is also soliciting comment on the revised RE.

To further address these issues, the Coast Guard will conduct a public meeting on November 17, 1993, to obtain information from the public on the applicability provisions of, and the methods of compliance with, the NPRM.

The public meeting will include discussions of the benefits and disadvantages of high level indicating devices, such as the problems of human error. The Coast Guard is especially interested in the public's evaluation of the effectiveness and costs of the proposed devices.

Dated: October 4, 1993.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security & Environmental Protection.

[FR Doc. 93-25654 Filed 10-20-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP-300297; FRL-4639-8]

RIN No. 2070-AC18

Carbophenothion; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke all tolerances on raw agricultural commodities, and all food and feed additive regulations, for residues of the insecticide carbophenothion. EPA is initiating this action because all registered uses of carbophenothion on these commodities have been cancelled. Therefore, there is no need to maintain the tolerances. Ample time has elapsed for treated items to clear the marketplace as these uses have been cancelled for over 3 years.

DATES: Written comments, identified by the document control number OPP-300297, must be received on or before November 22, 1993 in the Federal Register.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not

contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Parsons, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32G5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202. Telephone: 703-308-8037.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346(a) and 348) for residues of the insecticide carbophenothion in or on the commodities listed in 40 CFR 180.156, 40 CFR 185.700, and 40 CFR 186.700. These commodities are: alfalfa (fresh and hay); almond hulls; apples; apricots; beans (dry); beans, lima (succulent); beans, snap (succulent); bean straw; beets, garden (root and top); blueberries; cantaloupe; cattle fat; cherries; clover (fresh and hay); corn (kernels plus cob with husks removed); corn forage; cottonseed, undelinted; crabapples; cucumbers; eggplants; figs; goats, fat; grapefruit; grapes; hogs, fat; lemons; limes; milk; nectarines; olives; onions (dry bulb and green); oranges; peaches; pears; peas (succulent); pecans; peppers; pimentos; plums (fresh prunes); quinces; sheep, fat; sorghum, forage; sorghum, grain; soybeans (succulent); spinach; strawberries; sugarbeets (roots and tops); summer squash; tangerines; tomatoes; walnuts and watermelons (180.156); dried tea (185.700); and dehydrated citrus pulp and citrus meal for cattle feed (186.700). All uses of carbophenothion products have been cancelled, and any provision for sales and/or distribution of stocks has expired.

In October 1989, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide carbophenothion were cancelled. Because carbophenothion is no longer registered in the U.S. for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the

tolerances listed in 40 CFR 180.156, 185.700, and 186.700 for residues of carbophenothion.

Since the registrations for carbophenothion products were cancelled over 3 years ago, existing stocks of those products should have been depleted. Thus, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Further, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains carbophenothion may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal as it pertains to the section 408 tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300297]. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128 at the address given above.

Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, and individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner. Since all domestic registrations for use of carbophenothion were cancelled over 3 years ago, it is anticipated that no economic impact would occur at any level of business enterprises if the related tolerances were revoked. Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural Commodities, Food additives, Feed Additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 1, 1993.

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

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.156 [Removed]

- b. By removing § 180.156 *Carbophenothion; tolerances for residues.*

PART 185—[AMENDED]

2. In part 185:

- a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.700 [Removed]

- b. By removing § 185.700 *Carbophenothion.*

PART 186—[AMENDED]

3. In part 186:
 - a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.700 [Removed]

- b. By removing § 186.700 *Carbophenothion.*

[FR Doc. 93-25934 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 34)]

Rail General Exemption Authority— Exemption of Hydraulic Cement

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of hydraulic cement. If this commodity is exempted, it will be added to the list of exempt commodities in the Commission's regulations as Standard Transportation Commodity Code (STCC) No. 324, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 34) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927-5293, or Joseph H. Dettmar, (202) 927-5660. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether this and five other commodity

groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the Federal Register, we are granting this request by launching five separate investigations.

Persons submitting comments should address whether the exemption of this commodity meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, and data indicating the percentage of rail shipments that may already be moving exempt from regulation.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927-5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman

Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios for STCC No. 32411, hydraulic cement. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars

annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.¹ Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to

ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data² have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of this commodity in calendar years 1991 and 1992. Additionally, the tables show the average R/VC ratio applicable to all rail movements of this commodity as well as a percentage array of revenues in various R/VC (profitability) categories.

STCC 32411—HYDRAULIC CEMENT

	Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue (\$000)	Variable cost (\$000)	Average R/VC ratio (%) Percent of revenue in each R/VC category			
							R/VC >100	R/VC >100<140	R/VC >140<180	R/VC >180
1992	3,082	173,238	31,532	192,278	142,919	134.54	10.75	41.80	28.66	18.78
1991	2,919	159,708	29,324	179,713	133,586	134.53	12.23	40.34	28.91	18.52

The R/VC ratios depicted above show that, on average, the rail revenues for the transportation of hydraulic cement have exceeded variable costs by a margin of over 30%. However, those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 31,532 carloads in calendar year 1992 and 29,324 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Thus, 18% of the total carloads, which represented 19% of total industry revenues from this commodity, in calendar years 1992 and 1991, could potentially fall within our regulatory review.

However, the Commission's data indicate that approximately 24% of all rail revenues from hydraulic cement are contract rates. Because only some railroads voluntarily indicate whether

or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be much higher.

[FR Doc. 93-25920 Filed 10-20-93; 8:45 am]
BILLING CODE 7035-01-P

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 33)]

Rail General Exemption Authority—Exemption of Paints, Enamels, Lacquers, Shellacs, Etc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of paints, enamels, lacquers, shellacs, and other commodities included within Standard Transportation Commodity Code (STCC) No. 285. If these commodities are exempted, they will be added to the list of exempt commodities the Commission's regulations, and the exemption will be subject to the

conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993. There will be only one round of comments.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 33) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927-5293, or Joseph H. Dettmar, (202) 927-5660. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition Of AAR To Exempt Rail Transportation Of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether this and five other commodity groups involved in this proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the Federal Register, we are granting this

¹ The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption Of The Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 I.C.C.2d 894-933 (1989). The costing process was also modified to include "make-whole

adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review Of The General Purpose Costing System, (not printed) served March 1, 1993.

² The waybill sample data allow estimation of industry totals for revenues, variable costs, and car

counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

request by launching five separate investigations.

Persons submitting comments should address whether the exemption of these commodities meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, data indicating the percentage of rail shipments that may already be moving exempt from regulation, and information as to whether subclasses of STCC No. 285 merit special treatment.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927-5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new

regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios for STCC No. 285, paints, enamels, lacquers, shellacs, etc. These ratios were developed by the Commission's Office of Economics through a sorting of the

costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.¹ Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data² have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of these commodities in calendar years 1991 and 1992. Additionally, the table shows the average R/VC ratio applicable to all rail movements of these commodities as well as a percentage array of revenues in various R/VC (profitability) categories.

STCC 285—PAINTS, ENAMELS, LACQUERS, SHELLACS, ETC.

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue (\$000)	Variable cost (\$000)	Average R/VC ratio (%)	Percent of revenue in each R/VC category			
							R/VC <100	R/VC >100 - <140	R/VC >140 - <180	R/VC >180
1992	269	11,306	800	16,286	13,604	119.72	23.42	32.53	21.55	22.50
1991	261	11,624	1,100	15,917	13,257	120.07	29.95	27.87	15.07	27.12

The R/VC ratios depicted above show that, on average, the rail revenues for the transportation of paint, enamels, lacquers, shellacs, etc. have exceeded variable costs by only a slight margin. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the

extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 880 carloads in calendar year 1992 and 1,100 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Therefore, approximately 9% of the

total carloads, which represented 23% and 27% of total industry revenues from this commodity (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that approximately 22% of all rail revenues from these commodities are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements

¹ The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption Of The Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 L.C.C.2d 894-933 (1989). The costing process was also modified to include "make-whole

adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review Of The General Purpose Costing System, (not printed) served March 1, 1993.

² The waybill sample data allow estimation of industry totals for revenues, variable costs, and car

counts. Because the Waybill File provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

are moved under contract, the true extent of contract rates associated with these commodities is likely to be higher. Likewise, our data show that over 43% of the industry's 1991 and 1992 revenues from these commodities were derived from movements in exempt equipment (TOFC or boxcar).

[FR Doc. 93-25921 Filed 10-20-93; 8:45 am]
BILLING CODE 7035-01-P

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 30)]

Rail General Exemption Authority— Exemption of Rock Salt, Salt

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of rock salt and salt. If these commodities are exempted, they will be added to the list of exempt commodities in the Commission's regulations as Standard Transportation Commodity Code (STCC) Nos. 14715 (rock salt) and 28991 (salt), and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 30) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927-5293, or Joseph H. Dettmar, (202) 927-5660. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition Of AAR To Exempt Rail Transportation Of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether these and four other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the *Federal Register*, we are granting

this request by launching five separate investigations.

We are considering rock salt and salt jointly in this proceeding because it appears that these commodities have similar transportation characteristics. Interested persons may address the appropriateness of an exemption for either of these commodities on a separate basis, however.

Persons submitting comments should address whether the exemption of these commodities meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, and data indicating the percentage of rail shipments that may already be moving exempt from regulation.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Comments are invited on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927-5720. Persons seeking waybill data must comply with 49 CFR 1244.8. Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners, Phillips, Philbin and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below are separate arrays of revenue-to-variable cost (R/V) ratios for rock salt and salt. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.¹ Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/V ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the tables below, expanded data² have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of rock salt and salt in calendar years 1991 and 1992. Additionally, the tables show the average R/V ratio applicable to *all* rail movements of the commodity as well as a percentage array of revenues in various R/V (profitability) categories.

¹ The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption Of The Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 I.C.C.2d 894-933 (1989). The costing process was also modified to include "make-whole

adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review Of The General Purpose Costing System, (not printed) served March 1, 1993.

² The waybill sample data allow estimation of industry totals for revenues, variable costs, and car

counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

STCC No. 14715—ROCK SALT

Calendar year	Number of way-bills	Total carloads	Carloads >180	Revenue (\$000)	Variable cost (\$000)	Average R/V ratio (%)	Percent of revenue in each R/V category			
							R/V >100	R/V >100<140	R/V >140<180	R/V >180
1992	310	25,287	2,772	23,557	20,153	116.89	21.13	49.23	17.55	12.09
1991	318	28,561	1,532	28,021	23,915	117.17	22.21	49.18	21.83	6.77

The R/V ratios depicted above show that, on average, the rail revenues for the transportation of rock salt have exceeded variable costs by only a slight margin. Those R/V ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not

reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/V ratios shown above.

We estimate that, nationwide, 2,772 carloads in calendar year 1992 and 1,532 carloads in calendar year 1991 generated R/V cost ratios higher than the jurisdictional threshold (180%). Therefore, approximately 8% of the total carloads, which represented 12% and 7% of total industry revenues from

this commodity (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that over 54% of all rail revenues from rock salt are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be higher.

STCC No. 28991—SALT, COMMON

Calendar year	Number of way-bills	Total carloads	Carloads >180	Revenue (\$000)	Variable cost (\$000)	Average R/V ratio (%)	Percent of revenue in each R/V category			
							R/V <100	R/V >100<140	R/V >140<180	R/V >180
1992	610	27,712	1,804	35,589	38,697	91.97	47.07	29.85	14.65	8.43
1991	515	24,048	1,304	31,865	37,333	85.35	46.32	34.34	12.27	7.07

The R/V ratios depicted above show that, on average, rail revenues for the transportation of common salt have failed to cover associated variable costs. Those R/V ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract. This would likewise overstate the R/V ratios shown above.

We estimate that, nationwide, 1,804 carloads in calendar year 1992 and 1,304 carloads in calendar year 1991 generated revenue-to-variable cost ratios higher than the jurisdictional threshold (180%). Therefore, approximately 6% of the total carloads, which represented approximately 8% of total industry revenues from this commodity in the years 1992 and 1991, could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that approximately 19% of all rail revenues from common salt are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this

commodity is likely to be higher. Likewise, our data show that over 35% of the industry's 1991 and 1992 revenues from this commodity were derived from movements in exempt equipment (TOFC or boxcar).

[FR Doc. 93-25924 Filed 10-20-93; 8:45 am]
BILLING CODE 7035-01-P

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 31)]

Rail General Exemption Authority—Exemption of Grease or Inedible Tallow, Etc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of grease or inedible tallow and other products in Standard Transportation Commodity Code (STCC) No. 20143. If these commodities are exempted, they will be added to the list of exempt commodities in the Commission's regulations, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 31) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927-5293, or Joseph H. Dettmar, (202) 927-5660. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups, the railroad petitioners requested that we commence separate investigations of whether this and five other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the *Federal Register*, we are granting this request by launching five separate investigations.

Persons submitting comments should address whether the exemption of these commodities meets the statutory criteria of section 10505. Especially useful would be modal market share data,

revenue-to-variable cost ratio data, data indicating the percentage of rail shipments that may already be moving exempt from regulation, and data showing that subclasses of STCC No. 20143 require special treatment.

Attached to this notice as an appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927-5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of

limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios for STCC No. 20143, grease or inedible tallow. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by all United States railroads

that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.¹ Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data² have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of grease or inedible tallow in calendar years 1991 and 1992. Additionally, the table shows the average R/VC ratio applicable to all rail movements of these commodities as well as a percentage array of revenues in various R/VC (profitability) categories.

STCC 20143—GREASE OR INEDIBLE TALLOW

Calendar year	Number of waybills	Total carloads	Carloads >180	Revenue (\$000)	Variable Cost (\$000)	Average R/VC ratio (%)	Percent of revenue in each R/VC category			
							R/VC <100	R/VC >100-140	R/VC >140-180	R/VC >180
1992	429	17,268	2,360	37,482	28,225	132.80	9.76	52.25	20.45	17.54
1991	374	15,772	1,200	33,123	27,671	119.70	21.09	54.71	15.97	8.22

The R/VC ratios depicted above show that, on average, rail revenues for the transportation of grease/tallow have exceeded variable costs by a small margin. Those R/VC ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the

contract. This would likewise overstate the R/VC ratios shown above.

We estimate that, nationwide, 2,360 carloads in calendar year 1992 and 1,200 carloads in calendar year 1991 generated R/VC ratios higher than the jurisdictional threshold (180%). Therefore, approximately 11% of the total carloads, which represented 18% and 8% of total industry revenues from these commodities (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that 13% and 8% of all rail revenues from grease/tallow were contract rates (for 1992 and 1991, respectively). Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with these commodities is likely to be higher.

[FR Doc. 93-25925 Filed 10-20-93; 8:45 am]

BILLING CODE 7035-01-P

¹ The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Purposes, 5 L.C.C.2d 894-933 (1989). The costing process was also modified to include "make-whole

adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, Cost Recovery Percentage and Ex Parte No. 431 (Sub-No. 2), Review of the General Purpose Costing System (not printed), served March 1, 1993.

² The waybill sample data allow estimation of industry totals for revenues, variable costs, and car

counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 32)]

**Rail General Exemption Authority—
Exemption of Carbon Dioxide****AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: The Commission is investigating whether to exempt from regulation the rail transportation of carbon dioxide. If this commodity is exempted, it will be added to the list of exempt commodities in the Commission's regulations as Standard Transportation Commodity Code (STCC) No. 28133, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on November 22, 1993.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 32) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard H. Dixon, Jr., (202) 927-5293, or Joseph H. Dettmar, (202) 927-5660. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: In Ex Parte No. 346 (Sub-No. 29), *Rail General Exemption Authority—Petition Of AAR To Exempt Rail Transportation Of Selected Commodity Groups*, The railroad petitioners requested that we commence separate investigations or whether this and five other commodity groups involved in that proceeding should be exempted from regulation pursuant to 49 U.S.C. 10505. By this and four other notices of proposed rulemaking published today in the *Federal Register*, we are granting this request by launching five separate investigations.

Persons submitting comments should address whether the exemption of this

commodity meets the statutory criteria of section 10505. Especially useful would be modal market share data, revenue-to-variable cost ratio data, and data indicating the percentage of rail shipments that may already be moving exempt from regulation.

Attached to this notice as an Appendix is information derived from our waybill sample that we propose to consider as part of the record. Interested persons are invited to comment on this information. Persons seeking data or work papers underlying this information should contact Thomas A. Schmitz at (202) 927-5720. Persons seeking waybill data must comply with 49 CFR 1244.8.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption were granted, it would not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue was of limited scope and/or (b) regulation of this transportation was not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). These requirements make it unlikely that a substantial number of small entities would be significantly affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; 5 U.S.C. 553.

Decided: October 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,
Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

Shown below is an array of revenue-to-variable cost (R/VC) ratios of STCC No. 28133, carbon dioxide. These ratios were developed by the Commission's Office of Economics through a sorting of the costed waybill file. The computerized waybill file provides a stratified sample of waybills reported by the United States railroads that terminate more than 4,500 cars annually. It is the most representative and reliable sample of rail freight traffic publicly available.

Unit cost data, applicable to individual class I carriers, were applied to the movement characteristics contained on each waybill record using costing procedures adopted by the Commission.¹ Regional cost data were used for class II and class III carriers. Rates applicable to each sample movement were taken directly from the waybill file. However, certain class I carriers report estimated tariff revenues in place of actual contract rates. Those carriers provide the Commission with a rate decoder that can be used to ascertain the actual contract rate applicable to each of those coded waybills. The R/VC ratios profiled below reflect the actual contract rates for those carriers reported rates for all others.

In each row in the table below, expanded data² have been depicted for the estimated industry revenues, variable costs, and car counts associated with the movement of carbon dioxide in calendar years 1991 and 1992. Additionally, the table shows the average R/VC ratio applicable to *all* rail movements of this commodity as well as a percentage array of revenues in various R/VC (profitability) categories.

¹ The costing process, which develops system average costs, was adopted by the Commission in Ex Parte No. 431 (Sub-No. 1), *Adoption of the Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes*, 5 I.C.C.2d 894-933 (1989). The costing process was also modified to include "make-whole

adjustments" recently adopted by the Commission in a joint decision in Ex Parte No. 399, *Cost Recovery Percentage* and Ex Parte No. 431 (Sub-No. 2), *Review of the General Purpose Costing System*, (not printed) served March 1, 1993.

² The waybill sample data allow estimation of industry totals for revenues, variable costs, and car

counts. Because the waybill file provides a stratified sample of terminated railroad shipments, a statistical expansion factor, related to the sampling rate, is associated with each stratum to estimate industry totals.

STCC No. 28133—CARBON DIOXIDE

Calendar year	Number of way-bills	Total carloads	Carloads >180	Revenue (\$000)	Variable cost (\$000)	Average R/V ratio (percent)	Percent of revenue in each R/V category			
							R/V <100	R/V >100- <140	R/V >140- <180	R/V >180
1992	440	18,488	1,560	29,438	24,583	119.75	24.06	47.61	14.27	14.06
1991	312	13,200	960	22,004	18,167	121.12	21.59	49.70	17.00	17.71

The R/V ratios depicted above show that, on average, the rail revenues for the transportation of carbon dioxide have exceeded variable costs by only a slight margin. Those R/V ratios may be somewhat overstated to the extent that some reported rates may reflect tariffs rather than the contracts that actually apply to the traffic. Additionally, even reported contract rates may be overstated to the extent they do not reflect year-end adjustments applicable to volume incentive provisions of the contract.

This would likewise overstate the R/V ratios shown above.

We estimate that, nationwide, 1,560 carloads in calendar year 1992 and 960 carloads in calendar year 1991 generated R/V ratios higher than the jurisdictional threshold (180%). Therefore, approximately 8% of the total carloads, which represented 14% and 12% of total industry revenues from this commodity (in 1992 and 1991, respectively), could potentially fall within our regulatory review.

Additionally, the Commission's data indicate that approximately 24% of all rail revenues from carbon dioxide are contract rates. Because not all railroads voluntarily indicate whether or not their sampled waybill movements are moved under contract, the true extent of contract rates associated with this commodity is likely to be higher.

[FR Doc. 93-25922 Filed 10-20-93; 8:45 am]
BILLING CODE 7035-01-P

Notices

Federal Register

Vol. 58, No. 202

Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collection should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee' Poehls, (202) 736-4743, FA/AS/ISS/RM, Room B930 NS, Washington, DC 20523.

Date Submitted: October 1, 1993

Submitting Agency: Agency for International Development

OMB Number: 0412-0524

Type of Submission: Renewal

Title: Guidelines for Development Education Project Grants

Purpose: The Biden-Pell Amendment to the International Security and Development Cooperation Act of 1980 urges the Administrator of A.I.D. to provide support to the ongoing efforts of private and voluntary organizations engaged in increasing public awareness of the issues pertaining to world hunger and poverty. A.I.D.'s major response to this legislative mandate is the Development Education Grants Program, initiated in FY 1982. Through this competitive, cost-shared grants programs, applications for funding are considered on an annual basis. The information is used by A.I.D. officials in order to select the most qualified candidates for grant awards.

Annual Reporting Burden: Respondents: 10, annual responses: 10; average

hours per response: 5; annual burden hours: 50

Reviewer: Jeffery Hill (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 14, 1993.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 93-25848 Filed 10-20-93; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 15, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

- (1) Agency proposing the information collection;
- (2) Title of the information collection;
- (3) Form number(s), if applicable;
- (4) How often the information is requested;
- (5) Who will be required or asked to report;
- (6) An estimate of the number of responses;
- (7) An estimate of the total number of hours needed to provide the information;
- (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

New Collection

- Animal and Plant Health Inspection Service

Animal Damage Control Client Satisfaction Survey

Annually

Individuals or households; State or local governments; Farms; Businesses or

other for-profit; Federal agencies or employees; 1,120 responses; 280 hours

Kenneth Waters, (301) 436-8889.

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93-25839 Filed 10-20-93; 8:45 am]

BILLING CODE 3410-01-M

Food Safety and Inspection Service

[Docket No. 93-011N]

Criteria for Evaluation of Rapid Microbiological Testing Methods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: FSIS is pursuing new methodologies for detection of pathogenic microorganisms in samples of meat and poultry within hours of sample collection. The purpose of this notice is to inform interested parties of the criteria FSIS is using to evaluate and/or develop new testing methods.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Marie McNamara, Director, Microbiology Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 205-0212.

Background

FSIS is responsible for ensuring the safety and wholesomeness of meat and poultry products distributed in interstate commerce (21 U.S.C. *et seq.*, 21 U.S.C. 451 *et seq.*). Various inspection procedures are used to determine if meat and poultry products are adulterated. These procedures include organoleptic techniques, rapid screening methods used by in-plant inspectors, and sophisticated laboratory test methods used to confirm the presence of adulterants. In-plant testing methods can provide information rapidly to inspectors so that potentially adulterated product can be held until confirming tests are completed in FSIS laboratories.

FSIS has developed many test methods in its own laboratories in the past. All test methods used by FSIS laboratory staff and/or in-plant inspectors have been evaluated in FSIS laboratories to ensure they meet required criteria. All microbiological test methods approved for the use of

FSIS are published in the Microbiological Laboratory Guidebook (MLG) ¹ its supplements.

In the past when FSIS was developing new methods, design criteria were shared with interested parties in the scientific community. Similarly, the purpose of this notice is to provide to such interested parties the criteria and FSIS is using to evaluate and/or develop in-plant rapid testing methods to detect pathogenic and indicator microorganisms.

FSIS does not approve test methods for the food industry; it is only interested in evaluating and/or developing test methods needed to meet its statutory responsibilities for ensuring the safety of death and poultry products.

Desirable Characteristic of In-Plant Testing Methods

Modern technology is moving toward development of rapid, real-time, microbiological testing methods that may be suitable for use in meat and poultry slaughter/processing establishments. The testing methods that FSIS is interested in developing must be applicable to FSIS' regulatory mandates; be simple enough for use by FSIS inspectors; to inexpensive enough to be used frequently; create no biological hazards for the environment or the inspectors; and produce rapid, accurate, and easy to interpret results. The methods presently published in the MLG do not fulfill all these requirements. The specific criteria which FSIS is using to evaluate and/or develop new methodologies to detect pathogenic microorganisms ² is as follows:

1. **Faster results:** Presently results are available approximately 24 hours after sample collection; a significantly shorter time period is desired;

2. **Improved sensitivity, specificity, and accuracy:** The test methodology should detect accurately specific pathogens with no false negatives and few or no false positives;

3. **Eliminate enrichment steps:** The present need to growout pathogens to sufficient numbers for identification is time consuming and creates biological hazards;

4. **Minimize biological hazards:** Present methodologies create potential biological hazards for the environment as well as for inspectors and laboratory technicians;

5. **Minimize hands-on technical time:** The test methodology should not require more than a few minutes of an inspector's time to perform after the sample has been collected;

6. **Minimize technical competence:** The test methodology should be capable of being performed and interpreted by a non-microbiologist with limited training;

7. **Minimize physical resources:** The test methodology should not require expensive specialized equipment; and

8. **Minimize test cost:** The test methodology should be inexpensive so that FSIS can contemplate at least one test per working day/per relevant organism in each of its 6500 inspected establishments.

FSIS is devoting its resources to the development of test methodologies that meet the above criteria. After a method is developed, it must be evaluated scientifically in FSIS laboratories before it can be considered for use by FSIS. FSIS method evaluation is a lengthy process which can take 1-2 years to complete. For this reason, there must be sufficient evidence that the test methodology meets the above criteria before FSIS will undertake the evaluation process.

Interest Parties Contact

Interested parties with information concerning methodologies that would meet the above criteria should contact the Technology Transfer and Coordination Staff, FSIS, USDA, room 301 Annex Building, Washington, DC 20250, for additional information.

Done at Washington, DC, on: October 15, 1993.

H. Russell Cross,
Administrator.

[FR Doc. 93-25751 Filed 10-20-93; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Baker City Watershed/Washington Gulch Vegetation Management Projects, Wallowa-Whitman National Forest, Baker County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service, will prepare an environmental impact statement (EIS) for vegetation management actions

in the Baker City Municipal Watershed and Washington Gulch analysis areas to improve ecosystem health, reduce fire hazard, and maintain water quality. The proposed actions for the Watershed are likely to include salvage tree harvest, fuels reduction, road construction, fuel break construction, prescribed burning, reforestation, and wildlife habitat enhancement. The Washington and Watershed analysis areas are about 8 miles due west of Baker City. Drainages include Goodrich, Mill, Marble, Salmon, and Elk Creeks. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by December 31, 1993.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Charles Ernst, District Ranger, 3165 10th St., Baker City, OR 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Joanne Britton, Environmental Coordinator, 3165 10th St., Baker City, OR 97814, phone (503) 523-4476.

SUPPLEMENTARY INFORMATION: The proposed action is intended to implement the Forest Service Chief's direction to implement ecosystem management and to provide relief and recovery from insects, disease, and fuel buildup within the Baker City Municipal Watershed (referred to as "the Watershed"), and the Washington Gulch area which is adjacent to the Watershed, and is included in this proposal. Projects proposed within these analysis areas will contribute to the health of the Watershed, produce some timber volume for the local market, and meet wildlife and water quality standards and guidelines. The overall goal of the projects is to take care of the land by restoring and sustaining the integrity of soils, air, water, biological diversity, and ecological processes.

The Forest Service and Baker City recognize the high potential for an uncontrolled wildfire in the Watershed due to insect infestation and fuels buildup, and the devastating effects that a wildfire could have on water quality. The Watershed is unique in that it operates without a filtration system. If a fire were to occur within the Watershed, the effects would be long-lasting and would probably necessitate the need for

¹ A copy is available for review at the United States Department of Agriculture, Food Safety and Inspection Service, Hearing Clerk's office, room 3171, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

² Pathogenic microorganisms of interest are listed in the following publication of the American Public Health Association—Compendium of Methods for the Microbiological Examination of Foods, Third Edition, edited by Carl Vanderzant, PhD and Don F. Splittstoesser, PhD.

installation of an expensive filtration system.

Most of the Watershed lies within an inventoried roadless area. Some of the actions proposed, particularly road construction and timber harvest, will alter the roadless character and eliminate the potential for wilderness designation.

Considering both analysis areas, the municipal watershed and Washington Gulch, about 18,000 acres will be evaluated. The proposed actions include creating several fuelbreaks through timber harvest and underburning (about 2,700 acres); creating fuelbreaks through precommercial thinning or felling of understory trees (no tree removal in combination with underburning (about 500 acres); creating fuelbreaks with no mechanical treatment (about 750 acres); designating fuelbreaks with no treatment at this time, but which will be maintained over time as fuelbreaks (about 1,800 acres); and stocking control (timber sale harvest, generally commercial thins) in areas outside the fuelbreaks (about 4,300 acres).

Within both analysis areas there is 150–200 million board feet of standing timber, of which as much as 13 million board feet may be moved through harvest to achieve the objectives mentioned above.

It is anticipated that tree removal will be by helicopter. Depending on the amount of roads necessary to support a helicopter or other system, from 7 to 15 miles of road construction will be necessary.

This EIS will tier to the final EIS for the Wallowa-Whitman Land and Resource Management Plan and will be consistent with the Forest Plan, which provides the overall guidance for management of this area. The EIS will also include direction from agreements with the City of Baker and the Forest Service in relation to management of this area. In addition, direction from the 1988 Regional Competing and Unwanted Vegetation EIS will be incorporated.

Standards and guidelines in the Forest Plan for managing municipal watersheds emphasize the importance of maintaining or enhancing water quality. These standards and guidelines will form the basis for developing actions for this project.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested

in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comment.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Preliminary public issues identified during scoping include:

- Sustaining and maintaining water quality and quantity (timing and amount);
- Restoring ecosystem/tree health;
- Reducing the fire hazard;
- Maintaining and improving wildlife habitat;
- Balancing projects with economic considerations;
- Consideration for the roadless/unroaded character of the land impacts of road building on all the resources, and
- Maintaining a high level of visual quality over the landscape.

The analysis will also address use of the area for roosting by bald eagles, old-growth management, and other concerns as developed through the scoping process.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be completed about April 1994. The final EIS is scheduled for completion July 1994. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the *Federal Register*.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v.*

NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service will respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Robert M. Richmond, Forest Supervisor for the Wallowa-Whitman National Forest. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: October 12, 1993.

R.M. Richmond,
Forest Supervisor.

[FR Doc. 93-25845 Filed 10-20-93; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held November 9,

1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617-M2, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: October 15, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.
[FR Doc. 93-25948 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-588-038]

Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 9, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on bicycle

speedometers from Japan. The review covers one manufacturer/exporter, Cat Eye Co., Ltd. (Cat Eye), and the period November 1, 1991 through October 31, 1992.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the respondent, Cat Eye. Based on our analysis of the comments received, the final results of this review have changed from those presented in the preliminary results of review.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1993, the Department published in the *Federal Register* (58 FR 42289) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 9020.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cat Eye, a manufacturer/exporter of bicycle speedometers during the period November 1, 1991 through October 31, 1992.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.38 of the Commerce Regulations. We received a comment from the respondent, Cat Eye.

Comment: Cat Eye requested clarification of the difference-in-merchandise adjustments used and noted that the pre-paid tooling costs should have been added to the U.S. price.

Department's Position: Cat Eye's question regarding the difference-in-merchandise adjustments used are

explained in detail in our verification report. Cat Eye had not received the verification report when it submitted its comments because it submitted the comments well before the comment deadline. As discussed in the disclosure memorandum and in the verification report, we were not able to use Cat Eye's tape of July 28, 1993, in reaching our preliminary results. However, we did use it in these final results of review, and we have recalculated our results accordingly. Finally, we agree with Cat Eye that the amortization of tooling costs should be added to the U.S. price, not subtracted.

Final Results of Review

As a result of our review, we have determined that the following margin exists for the period November 1, 1991 through October 31, 1992:

Manufacturer/Exporter	Margin (Percent)
Cat Eye Co., Ltd.	0.43

The Department will instruct the Customs Service to assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, 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 the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) Since the margin for Cat Eye is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department will require a cash deposit of zero for all entries from Cat Eye; (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 less-than-fair-value 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, the cash deposit rate will be the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the court of International Trade (CIT) in *Floral Trade Council v. United States*, Slip Op. 93-79, and *Federal-Mogul Corporation and the Torrington Company v. United States*, Slip Op. 93-83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 26.44 percent, the "new shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also 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 has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: October 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-25949 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Detroit, MI MSA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at \$333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Detroit, Michigan geographic service area. The award number of this MBDC will be 05-10-94004-01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically,

the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 1, 1993. Applications must be postmarked on or before December 1, 1993.

ADDRESSES: Chicago Regional Office, 55 E. Monore Street, suite 1440, Chicago, Illinois 60603, (312) 353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, telephone (312) 353-0182.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The Collection of information requirements for this

project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. A pre-bid conference will be held on November 10, 1993, at 10 a.m. at the Chicago Regional Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applications are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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 applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for

possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements and contracts for more than \$100,000.

Anti-Lobbying Disclosures—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.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, 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 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 award document.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: October 15, 1993.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 93-25881 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Kansas City, Missouri—Kansas MSA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at \$222,196. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Kansas City, Missouri—Kansas geographic service area. The award number of this MBDC will be 07-10-94003-01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications

determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of \$50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less, and 35% of the total cost for firms with gross sales of over \$500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 1, 1993. Applications must be postmarked on or before December 1, 1993.

ADDRESSES: Chicago Regional Office, 55 E. Monroe Street, suite 1440, Chicago, Illinois 60603, (312) 353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, telephone (312) 353-0182.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. A pre-bid conference will be held on November 10, 1993, at 10 a.m. at the Chicago Regional Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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 applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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.

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.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000.

Anti-Lobbying Disclosures—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.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, 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 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 award document.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)
Dated: October 15, 1993.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 93-25880 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[I.D. 101593A]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council's (Council) Ad

Hoc Advisory Panel (Panel), consisting of commercial red snapper vessel owners, captains (or operators), and owners who operate their vessels, will meet on November 8, 1993, at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469-5000. The meeting will be held from 10 a.m. until 5 p.m.

The Panel will advise the Council on allocation alternatives for inclusion in a draft amendment pertaining to limited access and allocation of individual transferable quota (ITQ) shares or vessel licenses among the above three groups.

This meeting is physically accessible to the disabled. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo by November 1, 1993, at the address below.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: October 15, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-25843 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 101393E]

Progress on Emergency Striped Bass Research Study

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act. The meeting will convene on Thursday, December 2, 1993, at 10 a.m., and will adjourn at approximately 2 p.m. The meeting is open to the public and will be held in room 200, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

David G. Deuel, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 713-2347.

Authority: Pub. L. 96-118)

Dated: October 14, 1993.

Richard H. Schaefer,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-25842 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Special Access and Special Regime Programs; Delay in Implementation of Bond Requirement for Participants

October 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs changing the implementation date for the bond requirement.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to delay implementation of the bond requirement for participants in the Special Access and Special Regime Programs until November 1, 1993. See notices published in the *Federal Register* on August 3, 1993 (58 FR 41245) and September 20, 1993 (58 FR 48851).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 15, 1993.

**Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.**

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 15, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to delay implementation of the bond requirement for the Special Access and Special Regime Programs to begin on October 18, 1993.

Effective on October 15, 1993, you are directed to amend the September 15, 1993 directive to delay the implementation of the

bond requirement to begin on November 1, 1993. Customs will provide importers with a 30-day grace period to post the bond.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-25814 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see *Federal Register* notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 18, 1993, you are directed to amend further the directive dated November 25, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit ¹
Specific Limits	
237	244,320 dozen.
239	920,440 kilograms.
331/631	1,687,120 dozen pairs.
334/634	169,060 dozen.
335/635	261,080 dozen.
336/636	356,310 dozen.
351/651	237,540 dozen.
352/652	593,850 dozen.
359-C/659-C ²	968,086 kilograms.
613/614	18,563,068 square meters.
615	19,639,565 square meters.
617	14,126,732 square meters.
638/639	128,792 dozen.
647/648	598,197 dozen.

¹The limits have not been adjusted to account for any imports exported after December 31, 1992.

²Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-25931 Filed 10-20-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 3-4 November 1993 at the Eglin Air Force Base, FL.

The purpose of this meeting is to review the Conventional Armament programs at Wright Laboratory, Eglin AFB, FL. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25960 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 3-4 November 1993 at Wright-Patterson Air Force Base, OH, Armstrong Laboratory.

The purpose of this meeting is to review the Human Systems Technology programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25961 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 8-10 November 1993 at Kirtland Air Force Base, NM, Phillips Laboratory, on 8-10 November 1993.

The purpose of this meeting is to review the Advanced Weapons. The meeting will be closed to the public in

accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25958 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 8-10 November 1993 at Kirtland Air Force Base, NM, Phillips Laboratory (8-9 Nov 93) and Edwards Air Force Base, CA, Phillips Laboratory (10 Nov 93).

The purpose of this meeting is to review the Space and Missiles programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25959 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 16-17 November 1993 at Hanscom Air Force Base, MA.

The purpose of this meeting is to review the Geophysics programs. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25957 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 18-19 November 1993 at Griffiss Air Force Base, NY.

The purpose of this meeting is to review the Command, Control and Communications (C31) programs. The meeting will be closed to the public in

accordance with section 552(b) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25956 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 22-23 November 1993 at Wright-Patterson Air Force Base, OH, Wright Laboratory.

The purpose of this meeting is to review the Manufacturing Technology programs. The meeting will be closed to the public in accordance with section 552(b) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25954 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 22-23 November 1993 at Griffiss Air Force Base, NY.

The purpose of this meeting is to review the Computer Science programs. The meeting will be closed to the public in accordance with section 552(b) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25955 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Science and Technology Review Panel will meet from 8 a.m. to 5 p.m. on 22-24 November 1993 at the Air Force Office of Science and Research, Washington, DC.

The purpose of this meeting is to review the Basic Research programs. The meeting will be closed to the public in accordance with section 552(b) of

title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-25962 Filed 10-20-93; 8:45 am]

BILLING CODE 3910-01-W

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History, DoD.

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 committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date of Meeting: 23 Oct 93.

Place of Meeting: Franklin Court Building, U.S. Army Center of Military History, 1099 14th Street NW., 2nd Floor, Washington DC 20005-3402.

Time of Meeting: 0900-1500.

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

1. Purpose of meeting: The Committee will review the Army's historical activities for FY93 and those projected for FY94 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 23 October meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street NW., Washington, DC 20005-

3402. Telephone number (202) 504-5402.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93-26017 Filed 10-20-93; 8:45 am]

BILLING CODE 5000-03-M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 4 November 1993.

Time of Meeting: 1400-1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board C3I Issue Group members will meet with their sponsor (DISC4) to discuss the status of two sponsor initiated studies. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93-25902 Filed 10-20-93; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8-10 November 1993.

Time of Meeting: 0800-1630 hours, 8

November 1993. 0800-1630 hours, 9

November 1993. 0900-1130 hours, 10

November 1993.

Place: Pentagon, Washington, DC 8&9 November. Dumfries, VA, 10 November.

Agenda: The Army Science Board's C3I Issue Group will commence their Director of Information Systems for Command, Control, Communication, and Computers (DISC4) initiated Issue Group study on Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer,

Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93-25815 Filed 10-20-93; 8:45 am]

BILLING CODE 3710-08-M

Yakima Training Center Cultural and Natural Resources Committee; Meeting

AGENCY: Headquarters, I Corps and Fort Lewis, WA, Department of the Army, DoD.

ACTION: 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 committee meeting:

Name of committee: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date of meeting: November 18, 1993.

Place of meeting: Yakima Training Center, Building 266, Yakima, Washington.

Time of meeting: 1 p.m.

Proposed agenda: Cultural and Natural Resources Management Plan development and review.

All proceedings are open. For further information contact Stephen Hart, Chief, Civil Law, (206) 967-4540.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93-25883 Filed 10-20-93; 8:45 am]

BILLING CODE 5000-03-M

Delaware River Basin Commission

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 27, 1993. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 10 a.m. at the same location and will include status reports on the Commission's proposed Special Protection Waters nonpoint pollution regulations; flood preparedness in the Basin; compliance with DRBC water conservation ordinance requirements and potential use of a Commission Geographical Information System.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1994, in the aggregate amount of \$3,063,000 and a capital budget for the same period in the amount of \$1,722,500 in revenue and \$1,302,500 in expenditures. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Moyer Packing Company D-87-5 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 1.95 million gallons (mg)/30 days of water to the applicant's meat processing operation from Well Nos. 19 and 21. Commission approval on October 28, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 1.95 mg/30 days. The project is located in Lower Salford Township, Montgomery County and is in the Southeastern Pennsylvania Ground Water Protected Area.

2. *The Geon Company D-89-74.* An application for approval of a ground water withdrawal project to supply up to 15.12 mg/30 days of water to the applicant's industrial facility from a proposed new well, and to retain the existing withdrawal limit from all wells of 43.2 mg/30 days. The project is located in Oldmans Township, Salem County, New Jersey.

3. *Alpine Mountain Ski Area D-90-8.* An application for approval of a surface water withdrawal of up to 0.50 million gallons per day (mgd) for purposes of snowmaking at the applicant's ski resort. Water will be withdrawn from an intake on the Brodhead Creek and pumped to a nearby manmade storage pond from which it will be pumped to supply the applicant's snowguns. The project is located in Price Township, Monroe County, Pennsylvania.

4. *New Jersey Department of Corrections D-90-21 CP.* A project to upgrade and expand the Bayside State Prison sewage treatment plant (STP) from 0.235 mgd to 0.55 mgd. The expanded STP will serve only the correctional facilities. The treated effluent will continue to discharge, via a new outfall point to Riggins Ditch, a tributary of the Delaware Bay, in Maurice River Township, Cumberland County, New Jersey.

5. *Township of Sparta D-92-23 CP.* An application for approval of a ground water withdrawal project to supply up to 10 mg/30 days of water to the

applicant's distribution system from Newstar Well Nos. 1 and 2, and Autumn Hill Well Nos. 1 and 2; and to retain the existing withdrawal limit from all wells located within the Delaware River Basin of 18.84 mg/30 days. The project is located in Sparta and Byram Townships, Sussex County, New Jersey.

6. *Hickory Valley Golf Club D-92-24.*

An application for approval of withdrawal of up to 0.5 mgd from Swamp Creek, a tributary of the Perkiomen Creek, to irrigate the Hickory Valley Golf Club 36-hole, 254-acre golf course. The Swamp Creek intake is located on the golf course property and is situated just north of Ludwick Road and west of Big Road at the confluence of Schlegel Run in New Hanover Township, Montgomery County, Pennsylvania.

7. *Northampton, Bucks County, Municipal Authority D-93-5 CP.* A revised application to include additional sources of ground water to supply up to 18.0 mg/30 days of water to the applicant's distribution system from new Well Nos. 5, 6 and 13, and to increase the existing withdrawal limit of 48.0 mg/30 days from all wells to 66.0 mg/30 days. The project is located in Northampton Township, Bucks County and is located in the Southeastern Pennsylvania Ground Water Protected Area.

8. *RHI-Oak Terrace Inc. D-93-30.* A revised application for approval of a ground water withdrawal project for golf course irrigation. New Well No. PW-1 will supply up to 5.0 mg/30 days to supplement two existing wells which have been in service since the 1950's, and the limit from all wells will be 5.0 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *City of Millville D-93-33 CP.* An application to replace the withdrawal of water from Airport Well No. 3 in the applicant's water supply system due to ground water contamination. The applicant requests that the withdrawal from replacement Airport Well No. 4 be limited to 43.2 mg/30 days, and that the total withdrawal from all wells remain limited to 200 mg/30 days. The project is located in the City of Millville, Cumberland County, New Jersey.

10. *The Upper Hanover Authority D-93-36 CP.* An application to consolidate the various ground and surface water supply facilities of The Upper Hanover Authority (TUHA) and the Red Hill Water Authority (RHWA) into one comprehensive docket for a consolidated system operated by the TUHA. The proposed total allocation of

22.4 mg of ground water is not an increase in existing allocations. Well Nos. TUHA-3, RH-1, and RH-2 are located in Upper Hanover Township, Montgomery County; Well Nos. TUHA-1 and TUHA-2 are located in Hereford Township, Berks County, all in the Southeastern Pennsylvania Ground Water Protected Area. Kemmerer Spring is located in Upper Milford Township, Lehigh County, Pennsylvania.

11. *Big Boulder Corp. D-93-53.* A proposal to construct a replacement intake on Big Boulder Lake, remove the existing intake structure, and continue to serve the applicant's snow making operations at the Big Boulder ski area. The maximum daily pumping rate will continue to be 4.03 mgd. The intake project is located on the west side of Big Boulder Lake, on an unnamed tributary of Tunkhonnock Creek, in Kidder Township, Carbon County, Pennsylvania.

12. *Metropolitan Edison Company (Met-Ed) D-93-60.* An application for approval of Met-Ed's proposed 152 megawatt (MW) oil/gas fired combustion turbine (CT) to be constructed at its existing Portland Generating Station, situated on the west bank of the Delaware River in Upper Mount Bethel Township, Northampton County, Pennsylvania. The project will entail a new use of approximately 100,380 gallons per day during peak month operation. The new CT project will not entail modification of the existing water withdrawal, treatment or discharge facilities at the station. Cooling water and treated wastewater will continue to discharge to Water Quality Zone 1-D of the Delaware River. Water for the proposed CT will be provided via the existing Delaware River intake facilities. The project withdrawal will continue to serve only the Met-Ed Portland Generating Station.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: October 12, 1993.

Susan M. Weisman,
Secretary.

[FR Doc. 93-25832 Filed 10-20-93; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Impact Statement on a Proposed Policy for the Acceptance of United States Origin Foreign Research Reactor Spent Nuclear Fuel

AGENCY: United States Department of Energy (DOE).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposed policy for the acceptance of United States origin foreign research reactor spent nuclear fuel.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) to evaluate the potential environmental impacts of the adoption and implementation of a policy to accept spent nuclear fuel containing United States origin enriched uranium from foreign research reactors, and to conduct public scoping meetings. The implementation of this policy would result in the receipt of foreign research reactor spent nuclear fuel at one or more United States marine ports of entry, and overland transport to one or more DOE sites for storage pending ultimate disposal.

Under the proposed policy, the United States would accept up to 15,000 highly enriched uranium (HEU) or low enriched uranium (LEU) spent nuclear fuel elements during a maximum 15 year period from foreign research reactors in about 28 nations. The United States would subsidize the costs of transport, storage, handling and disposal of United States origin foreign research reactor spent nuclear fuel from developing nations. Developed nations would be charged a fee for the storage, handling and disposal of their spent nuclear fuel. "Developing nations," for the purposes of this proposal, are those nations eligible for assistance under the United Nations programs that are based on a combination of economic and demographic factors. The EIS will assess reasonable alternatives to adoption and implementation of the proposed policy, including alternative ports of entry, overland transportation routes, and storage sites, along with the no action alternative.

The purpose of the agency action is to support United States nuclear non-proliferation policy by removing the spent nuclear fuel from these reactors from international commerce (i.e., by returning the fuel to the United States) to preclude its diversion for use in nuclear weapons. In addition, the

proposed action would serve the purpose of encouraging the conversion of foreign research reactors currently using United States origin HEU fuels to LEU fuels.

DOE has requested that the Department of State be a cooperating agency in the preparation of this EIS. **DATES:** DOE invites all interested parties to submit comments related to the proposed implementation of the foreign research reactor spent nuclear fuel acceptance policy to ensure that all relevant environmental issues are considered. Written comments should be directed to John J. Jicha, Jr., at the address indicated below. Interested parties are also invited to present oral and written comments pertinent to the preparation of this EIS at nine (9) public scoping meetings to be held in November and December of 1993 at the times and places indicated below. Additional notice will be given via appropriate local media. At the scoping meetings, DOE also will provide the public with an opportunity to engage in more informal discussions with DOE representatives regarding DOE's proposed foreign research reactor spent nuclear fuel acceptance policy. The times and places of the scoping meetings are shown below.

The public scoping process begins with the date of this notice and extends until December 8, 1993. Written comments submitted by mail should be postmarked by December 8, 1993, to ensure consideration. Envelopes should be marked: "FRR SNF EIS." Written comments mailed after that date will be considered to the extent practicable.

Oral and written comments will be given equal consideration. Individuals desiring to speak at a public scoping meeting (or meetings) should pre-register to do so by contacting either by telephone or in writing, the contact person(s) designated for the meeting(s). Pre-registration should occur at least two days before the designated meeting. The meetings will be chaired by a presiding officer. The public scoping meetings will not be conducted as evidentiary hearings. Speakers will not be cross-examined, although DOE representatives present may ask clarifying questions.

To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted each speaker. Depending on the number of persons who request an opportunity to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations. Persons wishing to speak on behalf of organizations should identify the

organization in their request. Persons who have not submitted a timely request to speak may register at the meetings and will be called on to speak if time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will make a transcript of each meeting. Copies will be made available for inspection during business hours at the DOE Freedom of Information Reading Room (Room 1E-190), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday and in local DOE reading rooms. Locations of local reading rooms for the scoping meetings are listed below.

Scoping Meetings Schedule, Contact Persons, and Reading Room Locations

Meeting: Idaho Falls, ID

Date: Tuesday, November 9, 1993

Time: 9 a.m.-1 p.m., 2 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Westbank Inn, 475 River Parkway, Idaho Falls, ID 83402 (208) 523-8000

Contact For The Meeting Above

Mr. Briant Charboneau, United States Department of Energy, Idaho Field Office, One Energy Drive, Mailstop 1214, Idaho Falls, ID, 83402, (208) 526-0845.

Public Reading Room For The Meeting Above

Idaho Falls: DOE-ID Public Reading Room. INEL Technical Library, 1776 Science Center Drive, Idaho Falls, ID 83402 (208) 526-1191 or (208) 526-1144. Hours: 8 a.m.-7 p.m. Mon.-Thurs., 8 a.m.-5 p.m. Fri., 9 a.m.-1 p.m. Sat., 8 a.m.-5 p.m. Summer (Mon.-Fri).

Meeting: Aiken, SC/Augusta, GA area
Date: Wednesday, November 10, 1993
Time: 9 a.m.-1 p.m., 2 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: North Augusta Community Center, 495 Brookside Avenue, N. Augusta, SC 29841, (803) 441-4290.

Meeting: Savannah, GA

Date: Monday, November 15, 1993

Time: 9 a.m.-1 p.m., 2 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Hyatt Regency Savannah, 2 West Bay Street, Savannah, GA 31401, (912) 238-1234.

Meeting: Charleston, SC

Date: Wednesday, November 17, 1993

Time: 9 a.m.-1 p.m., 2 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Holiday Inn, Mt. Pleasant, 250 Highway 17, Mt. Pleasant, SC 29464, (803) 884-6000.

Contact For The Three Meetings Above

Mr. James R. Giusti, United States Department of Energy, Public Information Specialist, Office of External Affairs, P.O. Box A, Aiken, SC 29802 1-800-242-8269

Public Reading Room For The Three Meetings Above

Aiken: DOE-Public Reading Room, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801 (803) 641-3465. Hours: 8 a.m.-11 p.m. Mon.-Thrs., 8 a.m.-5 p.m. Fri., 10 a.m.-5 p.m. Sat., 2 p.m.-11 p.m. Sun.

Savannah: County Library, 2002 Bull Street, Savannah, GA 31499-4301 (912) 234-5127. Hours: 9 a.m.-9 p.m. Mon-Thrs., 9 a.m.-6 p.m. Fri., 10 a.m.-6 p.m. Sat., 2 p.m.-6 p.m. Sun.

Charleston: County Library, 404 King Street, Charleston, SC 29403 (803) 723-1645. Hours: 9:30 a.m.-9 p.m. Mon-Thrs., 9:30 a.m.-6 p.m. Fri. & Sat., 2 p.m.-6 p.m. Sun.

Meeting: Oakland, CA

Date: Thursday, November 18, 1993

Time: 9 a.m.-1 p.m., 2 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Parc Oakland Hotel, 1001 Broadway, Oakland, CA, 94607, (510) 451-4000.

Contact For The One Meeting Above

Ms. Brenda Fleming, United States Department of Energy, EM-37, 1000 Independence Avenue, SW., Suite GB215, Washington, DC 20585, 1-800-242-8269

Public Reading Room for the One Meeting Above

Oakland: DOE-Public Reading Room, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612 (415) 273-4429. Hours: 8:30 a.m.-4:30 p.m. Mon.-Fri.

Meeting: Hampton Roads, VA

Date: Monday, November 22, 1993

Time: 9 a.m.-1 p.m., 2 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Holiday Inn Portsmouth-Waterfront, 8 Crawford Parkway, Portsmouth, VA, 23704, (804) 393-2573.

Contact for the One Meeting Above

Ms. Brenda Fleming, United States Department of Energy, EM-37, 1000 Independence Avenue, SW. Suite GB215, Washington, DC 20585, 1-800-242-8269

Public Reading Room for the One Meeting Above

Portsmouth: Portsmouth Main Library, 601 Court Street, Portsmouth, VA 23704 (804) 393-8501. Hours: 9

a.m.-9 p.m. Mon.-Fri., 9 a.m.-5 p.m. Sat.

Meeting: Richland, WA

Date: Monday, November 29, 1993

Time: 1 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Shiloh Inn-Rivershore, 50 Comstock, Richland, WA, 99352, (509) 946-9006

Meeting: Portland, OR

Date: Wednesday, December 1, 1993

Time: 1 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: Red Lion Inn-Jantzen Beach, 909 N. Hayden Island Drive, Portland, OR, 97217, (503) 283-4466

Meeting: Seattle, WA

Date: Thursday, December 2, 1993

Time: 1 p.m.-5 p.m., 6:30 p.m.-9 p.m.

Location: The Westin Hotel, 1900 5th Avenue, Seattle, WA, 98101, (206) 728-1000.

Contact for the Three Meetings Above

Mr. Michael L. Talbot, Office of Communications, Richland Operations Office, United States Dept. of Energy, P.O. Box 550, Richland, WA 99352, (509) 376-7501.

Public Reading Rooms for the Three Meetings Above

Richland: Washington State University/Tri Cities, 100 Sprout Road, room 130, Richland, WA 99352, (509) 376-8583. Hours: 8 a.m.-12 Noon, and 1 p.m.-4:30 p.m. Mon.-Fri., 9 a.m.-1 p.m. Sat.

Portland: Portland State University Library, 934 S.W. Harrison, Portland, OR 97207, (503) 464-4617. Hours: 8 a.m.-5 p.m. Mon.-Fri., Closed Saturdays and Sundays.

Seattle: University of Washington, Suzzalo Library, FM-25 Government Publications, Seattle, WA 98195 (206) 543-0242. Hours: 7:30 a.m.-12 Midnight Mon.-Thrs., 7:30 a.m.-6 p.m. Fri., 9 a.m.-5 p.m. Sat., 12 Noon to 12 Midnight Sun.

Following completion of the public scoping process, DOE will issue an EIS Implementation Plan that will summarize the results of the scoping process and define the alternatives and issues to be addressed in the EIS. DOE plans to complete the draft EIS in December 1994. DOE will announce its availability in the Federal Register and will provide the public, organizations, and agencies with an opportunity to submit comments. These comments will be considered and addressed in the final EIS, scheduled for issuance in June 1995.

ADDRESSES AND FURTHER INFORMATION:

Written comments on the scope of the EIS, questions about the foreign research reactor spent nuclear fuel acceptance program, and requests for copies of the

Implementation Plan and/or the draft EIS should be directed to: Mr. John J. Jicha, Jr., Acting Director, Office of Spent Fuels and Special Projects (EM-37), United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. Mr. Jicha's telephone number is 202-586-9441.

For further information on the DOE NEPA review process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. Ms. Borgstrom's telephone number is 202-586-4600; a message may be left using the toll free number 800-472-2756.

DOE will have transcripts made of oral presentations at the scoping meetings. The transcripts, written comments, and relevant NEPA documents and other relevant documents will be available for review by members of the public, organizations, and agencies at various DOE public reading rooms during normal business hours. The addresses of the reading rooms that are located near the scoping meeting sites are those that have been identified previously in this Notice.

SUPPLEMENTARY INFORMATION:

Background

Since 1945, successive United States administrations have recognized that preventing the further spread of nuclear weapons is an important national security and foreign policy objective. At the same time, the United States has engaged in cooperative activities and promotion of "peaceful" uses of nuclear technologies in other countries.

As part of this nuclear cooperation, beginning with the "Atoms for Peace" program in the 1950s, the United States provided HEU for use as fuel in research and materials testing reactors and in special purpose nuclear reactors around the world. Although the HEU could be used in nuclear weapons, the HEU was provided to these countries as part of a trade-off in which the other countries agreed to forgo the development of nuclear weapons if the United States would assist them in peaceful applications of nuclear technologies. Early arrangements provided for the lease of the HEU, but most of the lease arrangements were converted to sales in 1964. In 1968, the United States began accepting returns of foreign research reactor spent nuclear fuel containing United States origin HEU.

The policy under which the previous acceptance of foreign research reactor spent nuclear fuel was conducted has been referred to generally as the "Off-

Site Fuels" policy. Under this policy, the United States reprocessed the spent nuclear fuel and provided credits to the foreign research reactors for HEU recovered from their spent nuclear fuels. The reprocessing was done in turn by the Atomic Energy Commission, the Energy Research and Development Administration, and finally by DOE. [At the present time, the United States has ceased all reprocessing of nuclear materials for extraction of fissile material for weapons use. DOE announced its intention to phase out reprocessing for HEU extraction in 1992, and presently has no intention of altering this policy. DOE is now planning activities to allow shutdown or alternative uses of its chemical separation facilities.]

To reduce the amount of HEU available in international commerce (in support of United States nuclear non-proliferation policy), DOE established the Reduced Enrichment for Research and Test Reactor (RERTR) fuels program in 1978. The RERTR program is aimed at reducing the demand for HEU by civilian users by developing high density foreign research reactor fuels using LEU to replace the HEU foreign research reactor fuels. To further encourage foreign research reactor operators to switch to the use of LEU fuels, the "Off-Site Fuels" policy was extended in 1986 to include the acceptance of spent nuclear fuel containing LEU of United States origin. The RERTR program has helped to bring about the conversion of a significant number of foreign reactors from the use of United States origin HEU or HEU from other western countries, and has contributed to the reduction in the level of United States exports of HEU.

In 1992, the United States non-proliferation policy was strengthened by the enactment of the Energy Policy Act of 1992 (42 U.S.C. 13201), which restricts the export of HEU from the United States. As a result, no further United States origin HEU will be made available to any foreign research reactor, other than to those for which the United States is actively developing a replacement LEU fuel. Furthermore, the United States is separately pursuing other arrangements that would restrict or eliminate sources of HEU from other countries.

The "Off-Site Fuels" policy as it pertained to the acceptance of HEU fuels expired in 1988. Acceptance of LEU fuels under the policy expired at the end of 1992. Due to the expiration of that policy, no United States origin HEU spent fuel has been transported to the United States since the end of 1988. In addition, presumably because

insufficient quantities of LEU spent fuel have emerged from reactors that have been converted from the use of HEU fuel, no LEU spent fuel has been transported to the United States since approximately 1988.

In 1991, DOE prepared an environmental assessment and issued for public comment a proposed finding of no significant impact concerning the proposed renewal of the "Off-Site Fuels" policy. The 1991 environmental assessment considered the impacts of reprocessing as a part of the proposed renewal of the "Off-Site Fuels" policy. DOE received a significant amount of public comment on the proposed finding of no significant impact, much of it in opposition to the proposed renewal. Subsequent to DOE's decision in 1992 to phase out reprocessing, DOE took no further action under the proposed finding of no significant impact to finalize a decision under NEPA concerning the proposed renewal of the "Off-Site Fuels" policy.

In late 1992 the Department of State and the Arms Control and Disarmament Agency requested that DOE reinstitute the acceptance of spent nuclear fuel from abroad. Other United States government agencies, such as the Nuclear Regulatory Commission, expressed concerns about the lack of a policy similar to the former "Off-Site Fuels" policy. The major issue raised by these agencies was the need to further the national policy of guarding against proliferation of nuclear materials (such as HEU) that could be diverted for weapons development. In July 1993, the Secretary of State reiterated his predecessor's request to the Secretary of Energy to reinstitute DOE's policy for acceptance of spent nuclear fuel from abroad to avoid situations in which certain foreign research reactors might withdraw from further cooperation with the RERTR program and renew their use of HEU fuels. As a result of these requests and the national interests at stake, the Secretary of Energy proposed the adoption of the policy to be addressed in this EIS.

Concurrent with the 1993 request from the Secretary of State, DOE was notified that spent nuclear fuel storage at certain foreign research reactor sites had reached or was fast reaching capacity. To maintain the status quo (relative to participation in the RERTR program) while this EIS is being prepared, preclude the need to shut down these foreign research reactors, and discourage reprocessing of spent nuclear fuel abroad, the Secretary of Energy proposed that DOE expeditiously evaluate the return of a limited amount of foreign research

reactor spent nuclear fuel to the United States for storage in an existing facility at the Savannah River Site. In order to respond to such near-term situations, the Secretary originally proposed to analyze the return of up to 550 foreign research reactor spent nuclear fuel elements in an environmental assessment, pending completion of the EIS on the proposed foreign research reactor spent nuclear fuel acceptance policy. Upon further analysis, however, it was determined that up to 700 fuel elements may need to be accepted while the EIS is being prepared in order to preserve the status quo and address nonproliferation interests. Thus, the environmental assessment will analyze the potential environmental consequences of the receipt, overland transport, and underwater (wet) storage of up to 700 elements of foreign research reactor spent nuclear fuel. The 700 elements are made up of 550 elements of foreign research reactor spent nuclear fuel from specifically identified foreign research reactors, plus another 150 foreign research reactor spent nuclear fuel elements that DOE may need to accept from as yet unidentified foreign research reactors to prevent an actual or potential near-term proliferation threat. DOE's proposed alternative ports for the acceptance of up to 700 fuel elements are Charleston, SC, or Hampton Roads, Virginia, with subsequent overland transport to and temporary wet storage in the Receiving Basin for Off-Site Fuels (RBOF) at DOE's Savannah River Site in South Carolina. The EA will specify the criteria by which the spent nuclear fuel elements to be accepted would be selected. These criteria will articulate the need for the near-term action that DOE is proposing before the completion of the EIS for the policy renewal. The subsequent removal of the up to 700 foreign research reactor spent nuclear fuel elements from RBOF and their preparation for and placement in dry storage, if required, will be assessed in the EIS.

Preliminary Description of Alternatives

DOE solicits recommendations for addressing the environmental impacts of the proposed policy described in this notice, and reasonable alternatives thereto. DOE intends to assess, in addition to the no action alternative, all reasonable alternatives to adoption and implementation of the proposed policy, including alternative marine ports of entry, overland transportation systems and routes, and storage technologies and sites.

The Proposed Action.

DOE proposes the adoption and implementation of a policy for the acceptance of foreign research reactor spent nuclear fuel containing United States origin enriched uranium. The implementation of this policy would involve the receipt of foreign research reactor spent nuclear fuel at one or more marine ports, and overland transportation from the port(s) to one or more DOE sites for storage pending disposal. DOE would take title to up to 15,000 fuel elements (up to 9,000 HEU and 6,000 LEU) from about 28 foreign countries. This is an amount equal to the projected spent fuel discharges of foreign research reactors using United States origin fuels over the next 15 years. Beyond that time frame, it becomes difficult to foresee the number of spent fuel discharges. This amount (15,000 fuel elements) would constitute only about 0.08% of the total quantity of spent nuclear fuel that DOE is currently managing. The United States would bear the full costs of transport, handling, storage and disposal of foreign research reactor spent nuclear fuel from developing nations. However, for developed nations, the United States would charge a fee for the handling, storage and disposal activities conducted by the United States.

Policy Alternatives

The EIS will assess alternatives to the proposed policy. Identified alternatives include (1) no action; (2) full-cost recovery from all participating nations; and (3) subsidization of costs for all participating nations. Other policy alternatives will be discussed, such as where the United States takes title to the foreign research reactor spent nuclear fuel, whether the policy should be limited to countries that have agreed to convert their foreign research reactors to the use of LEU fuels, and whether the policy should be limited to the acceptance of spent nuclear fuel only from countries that present a potential proliferation threat.

Storage Site Alternatives

The EIS will assess the potential impacts associated with the following alternatives for storage of the foreign research reactor spent nuclear fuel accepted under any of the above policy alternatives: (1) Storage at the Savannah River Site (SRS), Idaho National Engineering Laboratory (INEL), and the Hanford Site (HS) (i.e. decentralized storage); (2) storage at SRS and INEL (i.e., regionalized storage); and (3) storage of all foreign research reactor spent nuclear fuel at one of the

previously named DOE sites (i.e., centralized storage). In addition, DOE will consider in this EIS other potential sites identified as reasonable alternatives in the DOE-wide programmatic review of spent nuclear fuel management that is currently under preparation as part of an EIS for environmental restoration and waste management activities at INEL (see "Relationship with Other Actions," below). In response to a recent notice (58 FR 46951, September 3, 1993) regarding the INEL EIS, DOE has received comments to the effect that a broader range of DOE sites and non-DOE sites should be considered as reasonable alternatives. DOE is currently evaluating these comments. The Implementation Plan for the INEL EIS will reflect this consideration. As noted above, however, spent nuclear fuel from foreign research reactors that might be brought to the United States under the proposed acceptance policy would constitute a very small addition to the fuel DOE already manages. Therefore, DOE does not believe it is reasonable to consider managing any foreign research reactor fuel returned to the United States at any sites other than those that would be considered for DOE-wide programmatic purposes. DOE welcomes comments on this approach.

Transportation Alternatives and Analysis

The EIS will assess the impact of marine transport within the territorial waters of the United States, including the port of entry, and overland truck and rail transportation from alternative receiving port(s) to the alternative storage site(s). Because the proposed action involves ocean transport in the global commons, the EIS also will include consideration of potential environmental impacts on the global commons in accordance with Executive Order 12114.

DOE intends to analyze in the EIS the ports listed below as the proposed ports of entry at which foreign research reactor spent nuclear fuel would be received under the proposed foreign research reactor spent nuclear fuel acceptance policy:

Charleston, SC
Hampton Roads, VA
Oakland, CA
Portland, OR
Savannah, GA
Seattle-Tacoma, WA

Several criteria were used in development of the above list of proposed ports. These criteria include (a) adequacy of harbor and dock characteristics to satisfy the cask-

carrying ship requirements; (b) availability of safe and secure lag storage; (c) adequacy of overland transportation systems from ports to the storage site(s); (d) experience in safe and secure handling of hazardous cargo; (e) emergency preparedness status at the port and nearby communities; and (f) proximity to the proposed storage sites. A range of alternative ports also will be analyzed against these criteria for comparison. DOE requests comments on this approach and welcomes suggestions regarding the proposed and alternative ports. The analyses of the proposed and alternative ports will consider the population density of the area surrounding the ports and other factors that may affect the potential environmental impacts associated with use of the ports, including incident free operations and potential accidents.

DOE plans to assess transportation impacts using recognized computer codes such as RADTRAN and RISKIND for radiological and non-radiological incident-free and accident conditions, taking account of both the probabilities and consequences of accidents.

Storage Technology Alternatives

The EIS will discuss the potential impacts of proven (licensed or otherwise approved) dry storage and underwater "wet storage" technologies. Several above-ground dry storage technologies, including multi-purpose casks, metal casks, concrete casks, and horizontal multiple vault storage units, will be assessed. The configuration of stored casks will take criticality safety into consideration. The radiological monitoring systems and programs associated with the foreign research reactor spent nuclear fuel storage technologies will be described and assessed. DOE estimates that about 4 acres would be required to store up to 15,000 spent fuel elements proposed to be stored under the foreign research reactor policy. The impacts of construction of storage facilities also will be assessed. Ultimate disposal will be discussed to the limited extent possible, inasmuch as it is speculative at this time to determine what conditions or locations will be involved in the ultimate disposal of spent nuclear fuel. DOE plans to assess storage for approximately a 40 year period.

Identification of Environmental Issues

The following environmental issues have been identified for analysis in the foreign research reactor spent nuclear fuel EIS. This list is presented to facilitate discussion on the scope of the EIS and is not intended to be all-inclusive or to predetermine the scope.

Therefore, DOE invites comments on these and any other issues relevant to the analysis in this EIS.

(1) Potential radiological impacts in terms of both radiation doses and resulting health risks to the environment and to people, including workers and the general public (i.e., individuals and the total population, children and adults, present and future generations) under the various alternatives under routine and accident conditions.

(2) Potential impacts on the public, workers and the environment associated with the proposed construction of any facilities needed for the handling and storage of the foreign research reactor spent nuclear fuel.

(3) Direct, indirect and cumulative effects resulting from the proposed action and alternatives, including impacts on: public and worker health and safety; natural ecosystems (including but not limited to air quality, water resources, plants and animals); the cultural environment (including but not limited to land use, historic resources and archaeological sites); and the socioeconomic situation. Effects to be analyzed include potential effects from marine transport in the territorial waters of the United States, receipt of the foreign research reactor spent nuclear fuel at the port of entry, handling operations in the port of entry, transportation to the storage site, handling operations at the storage site and storage of the foreign research reactor spent nuclear fuel.

(4) Other relevant issues identified by DOE or the public through the scoping process.

Relationship With Other Actions

DOE has prepared, or is currently preparing, NEPA documents for related programmatic, project specific and site specific actions. These relevant NEPA documents are listed below:

1. Environmental Assessment of the Urgent Relief/Acceptance of Foreign Research Reactor Spent Nuclear Fuel—The environmental assessment and resulting decision document, when available, will be placed in DOE public reading rooms. The removal of the foreign research reactor spent nuclear fuel analyzed in the environmental assessment from wet storage and its emplacement in dry storage, if necessary, will be assessed in this EIS.

2. Environmental Restoration and Waste Management and Programmatic Spent Nuclear Fuel EIS for the Idaho National Engineering Laboratory (INEL)—This EIS will include a comprehensive assessment of spent nuclear fuel receipt, transport,

processing, and storage at INEL. This is in compliance with the order of the United States District Court for the District of Idaho [*Public Service Company of Colorado v. Andrus*, Memorandum Opinion (September 21, 1993)]. Under a subsequent court order, the scheduled date for publishing the final EIS and Record of Decision is June 1995. No decisions concerning the transporting, receipt, processing, and storage of spent nuclear fuel from foreign research reactors at the INEL will be made until both the INEL EIS and this EIS have been completed.

3. Environmental Restoration and Waste Management Programmatic EIS (EM PEIS)—The EM PEIS is being prepared to address, among other issues, the potential environmental impacts associated with various DOE-wide configurations for managing radioactive waste. However, as specified in the Notice of Opportunity for Additional Public Comment on the scope of the INEL ER&WM EIS, "In view of the Court's Order with respect to the analysis of spent nuclear fuel, the INEL ER&WM EIS will include the programmatic analysis of spent nuclear fuel alternatives that was being prepared for the PEIS" (58 FR 46951, September 3, 1993; also see a related notice, 58 FR 47725, September 10, 1993). Accordingly, programmatic spent nuclear fuel management configurations will not specifically be assessed in the EM PEIS and, therefore, decisions resulting from the foreign research reactor spent nuclear fuel EIS will not be affected by the EM PEIS. The final EM PEIS (which will contain a summary of the programmatic spent nuclear fuel analysis now being prepared as part of the INEL EIS) is scheduled to be issued in early 1995 and its Record of Decision is scheduled to be published in late 1995.

Issued in Washington, DC, on October 18, 1993.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93-25919 Filed 10-20-93; 8:45 am]
BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket Nos. ER94-13-000, et al.]

PacificCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 14, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER94-13-000]

Take notice that PacifiCorp on October 8, 1993, tendered for filing a Notice of Termination of the Firm Transmission Service Agreement (Service Agreement) under PacifiCorp's FERC Electric Tariff, Original Volume No. 5 dated November 9, 1989, as amended, with Montana Power Company (Montana).

PacifiCorp requests a waiver of prior notice be granted and that an effective date for termination of the Service Agreement be October 1, 1993. This date is consistent with the termination of service under the Service Agreement.

Copies of the Notice of Termination were served upon Montana, Black Hills Power and Light Company, the Montana Public Service Commission, the Public Utility Commission of Oregon, and the Public Service Commission of Wyoming.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Houston Lighting & Power Co.

[Docket No. ER94-12-000]

Take notice that on October 7, 1993, Houston Lighting & Power Company (HL&P) tendered for filing executed transmission service agreements under HL&P's FERC Electric Tariff, Original Volume No. 1 for Transmission Service To, From and Over Certain HVDC Interconnections.

The filing consists of three firm power Transmission Service Agreements (TSA's) with (1) Public Service Company of Oklahoma (PSO), (2) Central Power and Light Company (CP&L) and (3) West Texas Utilities Company (WTU) providing in each instance for the transmission of up to 220 MW of power to be scheduled over the North HVDC Tie. The TSA's have terms that extend until December 31, 2007, unless earlier terminated upon 30 days notice to HL&P. HL&P has requested an effective date of October 7, 1993.

A copy of this filing has been sent to WTU, PSO and CP&L and to the Public Utility Commission of Texas.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corp.

[Docket No. ER94-9-000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on October 6, 1993, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12

(1993), as an initial rate schedule, an agreement with Consolidated Edison Company of New York, Inc. (Con Edison). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Con Edison and Con Edison will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 7, 1993, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Con Edison.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc. Kansas Gas and Electric Co.

[Docket No. ER94-15-000]

Take notice that on October 8, 1993, Western Resources, Inc. (WRI) tendered for filing cost data in support of a contractual discount rate contained in an Agreement on Prepayment and Security dated April 23, 1993, between WRI, Kansas Gas and Electric Company, and Oklahoma Municipal Power Authority. WRI states that upon acceptance, the parties intend to implement the prepayment provisions of that Agreement prior to March 31, 1994. This filing is proposed to become effective November 1, 1993.

A copy of this filing was served upon Kansas Gas and Electric Company, Oklahoma Municipal Power Authority, and the Kansas Corporation Commission.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER93-507-000]

Take notice that on October 8, 1993, Florida Power & Light Company (FPL) tendered for filing Amendment Number Three to the Long-Term Agreement to Provide Capacity and Energy by FPL to the City Electric System of the Utility Board of the City of Key West, Florida and Supplemental Prepared Direct Testimony of one of FPL's witnesses

FPL states that the amended filing is in accordance with section 35 of the Commission's regulations

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER93-944-000]

Take notice that Consolidated Edison Company New York, Inc. (Con Edison) on October 8, 1993, tendered for filing a Certificate of Concurrence in Docket No. ER93-944-000. In this docket, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a transmission service agreement pursuant to which Con Edison and Niagara Mohawk provide interruptible wheeling service to one another.

Con Edison requests that November 10, 1993, be allowed as the effective date of the filing.

Copies of Con Edison's filing were served upon the Public Service Commission of the State of New York and Niagara Mohawk.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Columbus Southern Power

[Docket No. ER93-637-000]

Take notice that on September 24, 1993, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company tendered for filing a request for a one-month deferral of action in the above referenced docket.

A copy of this filing was served upon the City of Columbus, Ohio, American Municipal Power-Ohio Inc., and the Public Utility Commission of Ohio.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Louis Dreyfus Electric Power Co.

[Docket No. ER92-850-003]

Take notice that on May 6, 1993, Louis Dreyfus Electric Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Co.

[Docket No. ER94-11-000]

Take notice that on October 7, 1993, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its Rate Schedule FERC No. 112, an agreement for the installation, ownership and maintenance by NYSEG of certain facilities at its Coopers Corners and Fraser Substations in connection with the construction by the Power Authority of the State of New York (NYPA) of its Marcy-south Transmission Lines. The

amendment consists of a letter agreement between NYSEG and NYPA and revises the payment schedule and otherwise updates and modifies the rates under Rate Schedule FERC No. 112. NYSEG has requested waiver of the notice requirements so that the amendment can be made effective as of July 1, 1993.

NYSEG states that a copy of the amendment has been served upon NYPA and upon the Public Service Commission of the State of New York.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER94-10-000]

Take notice that on Northeast Utilities Service Company (NUSCO), on October 7, 1993, tendered for filing a Service Agreement to provide non-firm transmission service to New England Power Company (NEP) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of the filing has been mailed to NEP.

Comment date: October 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25827 Filed 10-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-616-000]

Tennessee Gas Pipeline Co.; Intent to Prepare an Environmental Assessment for the Conesville Lateral Project and Request for Comments on its Scope

October 15, 1993.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket pertaining to the Conesville Lateral Project.

On August 3, 1993, Tennessee Gas Pipeline Company (Tennessee) filed an application, pursuant to section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity for authorization to construct and operate about 16.7 miles of new pipeline and associated data acquisition and control equipment.

The purpose of the project is to provide up to 117,000 dekatherms of natural gas per day to Columbus Southern Power Company's existing Conesville power plant.

Tennessee intends to complete construction and place the proposed facilities in service by January 1, 1995.¹ The total estimated cost of the proposed facilities is \$7,180,178.

By this notice, the FERC staff is requesting written comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. Comments should focus on potential environmental effects and measures to mitigate adverse impact. Written comments must be submitted by November 15, 1993, in accordance with the "Comment Procedures" discussed at the end of this notice.

Proposed facilities

The general location of the facilities is shown on the attached map.² Tennessee proposes to construct 16.7 miles of 14-inch-diameter pipeline. The proposed route would begin where Tennessee's existing pipeline crosses Brush Run Road in Guernsey County, Ohio. The

¹ The Conesville power plant is being converted to allow the burning of natural gas during periods of peak electric demand in order to comply with the 1990 amendments to the Clean Air Act (Amendments), American Electric Power Corporation and its subsidiary, Columbus Southern's system, must be in compliance with the Amendments starting January 1, 1995.

² The map referenced in this notice is not printed in the Federal Register, but was sent to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208-1371.

pipeline would end about 1.7 miles southeast of Conesville, on the west side of Wills Creek in Coshocton County, Ohio. Natural Gas & Fuel Corporation (National), a local distribution company, would construct a 2-mile pipeline to connect the Conesville Lateral with the power plant. National's pipeline will not be analyzed in this EA. Tennessee would install its data acquisition and control equipment within facilities constructed by National.

Construction Procedures

The proposed pipeline requires, in general, a 75-foot-wide construction right-of-way.

Construction of the pipeline would follow standard pipeline construction methods such as right-of-way clearing and grading, trenching, pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. Tennessee proposes to implement erosion control and revegetation measures and to use special construction techniques for wetland and water crossings. A detailed discussion of these construction procedures and mitigation plans will be in the EA.

Tennessee would hydrostatically test the new pipeline before placing it in service according to U.S. Department of Transportation minimum safety standards and specifications. Tennessee would not use chemicals during testing. Tennessee would obtain appropriate Federal and state discharge permits before testing.

Current Environmental Issues

The EA will address the environmental concerns identified by the FERC staff, intervenors, and concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Geology and Soils:

- Erosion control.
- Geological hazards.
- Impact on exploitable mineral resources such as sand, gravel, and coal.
- Effect on cropland.
- Right-of-way restoration, revegetation, and maintenance.

Water Resources:

- Effect on potable water supplies.
- Effect on surface water quality.
- Effect on wetland hydrology.

Biological Resources:

- Impact on wetlands.
- Impact on forest lands.
- Impact of habitat alteration.
- Short- and long-term effects of right-of-way clearing and maintenance.

—Impact on threatened and endangered species.

—Impact on fisheries.

Cultural Resources:

—Effect of the project on properties listed on or eligible for listing on the National Register of Historic Places.

Land Use:

—Impact on residences.

—Use of existing rights-of-way for pipeline construction and operation.

—Impact on crossing known and potential hazardous waste sites.

Alternatives:

—Route variations to avoid sensitive areas.

Comment Procedures

The FERC staff has sent a copy of this notice and request for comments on environmental issues to Federal, state and local environmental agencies, parties to this proceeding, and the public. File your comments on the scope of the EA as soon as possible but no later than November 15, 1993. All written comments must reference Docket No. CP93-616-000 and be sent to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to: Ms. Laura Turner, Environmental Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Support comments recommending that the FERC staff address specific environmental issues with a detailed explanation of the need to consider such issues.

The FERC staff's EA will be an independent analysis of the proposal and, together with the scoping comments received, will constitute part

of the record for consideration by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file a motion to intervene with the Secretary of the Commission, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Organizations, landowners, and other individuals receiving this notice have been selected to ensure public awareness of the Conesville Lateral Project and public involvement in the review process under the National Environmental Policy Act.

Additional information about the proposal, including detailed route maps for specific locations, is available from Ms. Laura Turner, telephone (202) 208-0916.

Lois D. Cashell,
Secretary.

[FR Doc. 93-25826 Filed 10-20-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP92-717-001, et al.]

Texas Eastern Transmission Co., et al.; Natural Gas Certificate Filings

October 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP92-717-001]

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas 77056-5310, filed pursuant to section 7(c) of the Natural

Gas Act, an amendment to its September 21, 1992, application for a certificate of public convenience and necessity in Docket No. CP92-717-000.

By this amendment Applicant requests authorization to delay the requested in service date from November 1, 1994 to November 1, 1996. Applicant states that this change is needed because of changes in the scope of certain projects. Applicant continues to request the same compression facility increases proposed in Docket No. CP92-717-000.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corp.

[Docket No. CP92-719-001]

Take notice that on September 1, 1993 Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas 77056-5310, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992, application for a certificate of public convenience and necessity in Docket No. CP92-719-000.

This amendment reflects the changes to Applicant's proposal in Docket No. CP92-719-000 as a result of revising the targeted in-service date in the Liberty Project from November 1, 1994, to November 1, 1995, and phasing the original construction and transportation over a two-year period. This amendment describes the Phase I facilities proposed for Applicant's system to transport volumes from Lebanon, Ohio, to Leidy, Pennsylvania.

By this Amendment, Applicant also proposes to provide firm transportation services commencing on November 1, 1995, (Phase I) and November 1, 1996 (Phase II) for the following shippers:

DTH/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc	18,630	19,974	38,604
The Brooklyn Union Gas Company	0	20,980	20,980
Long Island Lighting Company	19,134	19,469	38,603
KIAC Partners	16,113	0	16,113
Nissequogue Cogen Partners	1,511	0	1,511
Total	55,388	60,423	115,511

Applicant's Phase I facilities are estimated to cost \$55,125,400. The proposed Phase I facilities include:

(a) Approximately 5,350 HP of additional compression at its Lebanon Compressor Station, Ohio;

(b) New impellers at its Five Points Compressor Station, Ohio;

(c) Approximately 11.5 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(d) Approximately 3.25 miles of 36" pipeline loop between Somerset, Ohio, and Somerfield, Ohio;

(e) Approximately 4.44 miles of 36" pipeline loop between Holbrook,

Pennsylvania, and Uniontown, Pennsylvania;

(f) Approximately 4 miles of 36" pipeline loop between Delmont, Pennsylvania, and Aramargh, Pennsylvania;

(g) Approximately 3 miles of 36" pipeline loop between Lilly,

Pennsylvania, and Entriiken, Pennsylvania;

(h) Station piping modification and one impeller at the Perulack Compressor Station, Pennsylvania;

(i) A new metering and regulating station at the proposed interconnection of Texas Eastern Transmission Corporation's and Transcontinental Gas Pipe Line Corporation's pipelines near Leidy, Pennsylvania.

Due to this change of facilities the Applicant proposes rates different from those in the original application. The initial rates proposed for Phase I service under Schedule FTS-9 are:

Rate Per Dekatherm	
Reservation Charge	\$18.683
Authorized Overrun Charge	\$0.6143

By supplement to this amendment filed on October 1, 1993, Applicant stated that Phase II facilities are estimated to cost \$59,540,000 and would include the following:

(a) Approximately 6.29 miles of 30" pipeline loop between Lebanon, Ohio and Five Points, Ohio;

(b) Approximately 1,650 HP of additional compression at Applicant's Five Points Compressor Station, Ohio;

(c) Approximately 6.73 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(d) Approximately 4.34 miles of 36" pipeline loop between Berne, Ohio, and Holbrook, Pennsylvania;

(e) Approximately 3.35 miles of 36" pipeline loop between Holbrook, Pennsylvania, and Uniontown, Pennsylvania;

(f) Approximately 3.55 miles of 36" pipeline loop between Delmont,

Pennsylvania, and Armagh, Pennsylvania;

(g) Approximately 3.59 miles of 36" pipeline loop between Lily, Pennsylvania, and Entriiken, Pennsylvania;

(h) Approximately 4,600 HP of new compression at the Leidy Compressor Station, Pennsylvania.

The initial rates for Phase II service under Schedule FTS-9 are:

Rate Per Dekatherm	
Reservation Charge	\$18.094
Authorized Overrun Charge	\$0.5949

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

3. Liberty Pipeline Co.

[Docket No. CP92-715-001]

Take notice that on September 1, 1993, Liberty Pipeline Company (Applicant), Transco Tower, 2800 Post Oak Boulevard, Houston, Texas 77056, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992 application for a certificate of public convenience and necessity in Docket No. CP92-715-000.

By this Amendment the applicant is proposing an in-service date of November 1, 1995 and an increase in the estimated cost of the project. Capitol costs are estimated to change from \$152.2 million to \$162.2 million. The change in these costs reflects Applicant's revised in-service date. The Amendment has new rates to reflect these increased costs. Applicant

MCF/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc	18,500	19,834	38,334
The Brooklyn Union Gas Company	0	20,833	20,833
Long Island Lighting Company	19,000	19,333	38,333
KIAC Partners	16,000	0	16,000
Nissequogue Cogen Partners	1,500	0	1,500
Total	55,000	60,000	115,000

The construction of the proposed facilities is planned to be undertaken in two phases. The Phase I facilities are proposed to be constructed during the 1995 construction season with a proposed in-service date of November 1, 1995. The Phase II facilities are proposed to be constructed during the 1996 construction season with a proposed in-service date of November 1, 1996. In order to provide firm transportation for 55,000 Mcf/day,

proposed to be in service by November 1, 1995, Applicant proposes the following facilities:

1. New 16-inch tap on 36-inch Leidy Storage Field Header at M.P. 194.06, to receive volumes from Texas Eastern Transmission Corporation in Clinton County, Pennsylvania;

2. 6.67 mile 36-inch Leidy Loop from M.P. 142.74—M.P. 149.41 in Lycoming County, Pennsylvania;

proposes to charge a Reservation Rate of \$6.4573 (per month per Dth of MDQ) for its FT Rate Schedule and a Commodity Rate of \$0.2123 per Dth for its IT Rate Schedule.

Those pipelines proposing facilities for transportation upstream of Applicant are also filing amendments to their applications requesting a phased pattern of construction for the Liberty Project.

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP92-721-001]

Take notice that on September 1, 1993, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed, pursuant to section 7(c) of the Natural Gas Act, an amendment to its applications for a certificate of public convenience and necessity filed on September 21, 1992 in Docket No. CP92-721-000.

In this Amendment applicant seeks Commission authorization to delay the proposed in-service date to November 1, 1995, and to construct the proposed facilities in two phases.

By this Amendment Applicant proposes to provide firm transportation services commencing on November 1, 1995 (Phase I) and November 1, 1996 (Phase II) for the following shippers:

3. 1.10 mile 26-inch pipeline segment from the existing M&R Station in Morgan, New Jersey northward to a proposed M&R Station near South Amboy, New Jersey;

4. New Delivery Point, including an M&R Station near South Amboy, New Jersey.

In order to provide firm transportation of 60,000 Mcf/day proposed to be in service by November 1, 1996, for a total expansion of 115,000 Mcf/day,

Applicant proposes the following facilities:

1. 10.51 mile 36-inch Leidy Loop from M.P. 161.29—M.P. 171.80 in Lycoming and Clinton Counties, Pennsylvania;

2. 12,000 HP of additional compression and "A" Line regulator at Station 205 at M.P. 1773.40 in Lawrence Township, New Jersey;

3. Regulator Station Expansion at Milltown Regulator Station M.P. 1790.84, North Brunswick, New Jersey.

The total estimated cost for this project is higher than the cost originally filed in Docket No. CP92-721-000 because Applicant has adjusted the cost of the facilities to reflect the anticipated increase caused by phasing the construction and by revising the in-service dates of the project. The Phase I facilities are estimated to cost \$29,412,000 and the Phase II facilities

are estimated to cost \$48,217,000, for a total revised project cost of \$77,629,000.

Upon placing the Phase I facilities into service, Applicant proposes to charge an initial monthly reservation rate of \$8.4025 per Mcf. Upon placing the Phase II facilities into service, Applicant proposes to charge all shippers a monthly reservation rate of \$10.7083 per Mcf for the total service level of 115,000 Mcf per day.

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Texas Gas Transmission Corp.

[Docket No. CP92-730-001]

Take notice that on September 1, 1993, Texas Gas Transmission Corporation (Applicant), Post Office Box 1160, Owensboro, Kentucky 42302, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 24, 1992, application for a certificate of public convenience and necessity in Docket No. CP92-730-000.

In this Amendment, applicant seeks Commission authorization to delay the proposed in-service date to November 1, 1995, and to construct the proposed facilities in two phases.

By this Amendment, Applicant proposes to provide firm transportation services commencing on November 1, 1995, (Phase I) and November 1, 1996 (Phase II) for the following shippers:

MMBTU/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc.	7,238	26,876	34,114
Long Island Lighting Company	7,238	26,876	34,114
Brooklyn Union Gas Company	0	17,739	17,739
KIAC Partners	16,543	(168)	16,375
Total	31,019	71,323	102,342

The construction of the proposed facilities is planned to be undertaken in two phases. The Phase I facilities are proposed to be constructed during the 1995 construction season with a proposed in-service date of November 1, 1995. The Phase II facilities are proposed to be constructed during the 1996 construction season with a proposed in-service date of November 1, 1996.

In order to provide firm transportation service of 31,019 MMBtu/day, starting November 1, 1995, Applicant states that it needs the following facilities:

1. 3.50 miles of 36-inch pipeline looping beginning at the north end of the existing 36-inch No. 1 line, Mile 473+1755, and extending northward to Mile 476+4393, Webster and Hopkins Counties, Kentucky;

2. 1.60 miles of 36-inch pipeline looping, beginning at the north end of the existing 36-inch No. 1 line, Mile 570+3900, and extending northward to Mile 572+1790, Jefferson County, Kentucky;

3. 3.70 miles of 36-inch pipeline looping, beginning at the north end of the existing 36-inch No. 1 line, Mile 600+3278, and extending northward to Mile 604+1695, Oldham County, Kentucky;

4. 2.30 miles of 36-inch pipeline looping, beginning at the south end of

the existing 36-inch No. 1 line, Mile 704+1969, and extending southward to Mile 702+0385, Butler County, Ohio;

In order to provide firm transportation service of 71,323 MMBtu/day starting November 1, 1996, for a total expansion of 102,342 MMBtu/day, Applicant proposes the following facilities;

1. 6.25 miles of 36-inch pipeline looping, beginning at Mile 480+4509, and extending to Mile 487+0548, McLean County, Kentucky;

2. 4.18 miles of 36-inch pipeline looping, beginning at Mile 575+1200, and extending northward to Mile 579+2139, Jefferson County, Kentucky;

3. 8.24 miles of 36-inch pipeline looping, beginning at Mile 608+2223, and extending northward to Mile 616+3500, Oldham and Trimble Counties, Kentucky;

4. 2.79 miles of 36-inch pipeline looping, beginning at the Dillsboro Compressor Station, Mile 657+0079, and extending northward to Mile 659+4253, Dearborn County, Indiana;

5. 4.41 miles of 36-inch pipeline looping, beginning at Mile 697+4609, and extending the line southward to Mile 693+2451, Butler County, Ohio;

The Phase I facilities are estimated to cost \$16,050,000, and the Phase II facilities are estimated to cost \$43,360,000. The total revised project cost of \$59,410,000. The Applicant

proposes to charge a Zone SL-4 rate and a Zone 1-4 rate.

Zone SL-4

Demand Charge—\$9.77

Commodity Charge—\$.0411

Zone 1-4

Demand Charge—\$8.47

Commodity Charge—\$.0386

The Commission staff will convene a technical conference, if necessary after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corp.

[Docket No. CP92-720-001]

Take notice that on September 1, 1993 Texas Eastern Transmission Corporation (Applicant), 5400 Westheimer Court, Houston, Texas 77056-5310, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 21, 1992 application for a certificate of public convenience and necessity in Docket No. CP92-720-000.

This amendment reflects the changes to Applicant's proposal in Docket No. CP92-720-000 as a result of revising the targeted in-service date in the Liberty Project from November 1, 1994, to

November 1, 1995, and phasing the original construction and transportation over a two-year period. This amendment describes the Phase I facilities proposed

for Applicant's system to transport volumes from Lebanon, Ohio, to South Amboy, New Jersey.

By this Amendment, Applicant also proposes to provide firm transportation services commencing on November 1, 1995 (Phase I) and November 1, 1996 (Phase II) for the following shippers:

DTH/DAY

Shipper	Phase I	Phase II	Total
Consolidated Edison Company of New York, Inc	8,500	28,166	36,666
The Brooklyn Union Gas Company	10,500	9,833	20,333
Long Island Lighting Company	8,000	20,334	28,334
Power Authority of the State of New York	35,000	0	35,000
Nissequogue Cogen Partners	8,000	0	8,000
Total	70,000	58,333	128,333

Applicant's Phase I facilities are estimated to cost \$115,170,400. The proposed Phase I facilities include:

(a) approximately 8 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(b) approximately 1,650 HP of additional compression at its Somerset Compressor Station;

(c) approximately 3 miles of 36" pipeline loop between Somerset, Ohio, and Summerfield, Ohio;

(d) approximately 6,500 HP of additional compression at its Holbrook Compressor Station, Pennsylvania;

(e) approximately 1,650 HP of additional compression at its Uniontown Compressor Station, Pennsylvania;

(f) approximately 6.5 miles of 36" pipeline loop between Uniontown, Pennsylvania, and Bedford, Pennsylvania;

(g) approximately 6 miles of 36" pipeline loop between Bedford, Pennsylvania, and Chambersburg, Pennsylvania;

(h) approximately 11,000 HP of additional compression at its Marietta Compressor Station, Pennsylvania;

(i) approximately 1.52 miles of 42" pipeline loop between Lambertville, New Jersey, and Linden, New Jersey;

(j) approximately 11.7 miles of 24" pipeline connecting Texas Eastern Transmission Corporation's existing pipeline system in South Plainfield, New Jersey, to an interconnection with Liberty's proposed pipeline near South Amboy, New Jersey;

(k) one new meter and regulating station near South Amboy, New Jersey, for deliveries into the Liberty Pipeline Company's facility.

Due to this change of facilities, the Applicant proposes rates different from those in the original application. The initial rates proposed for Phase I service under Schedule FTS-6 are:

Rate Per Dekatherm

Reservation Charge \$26.006
 Authorization Overrun Charge ... \$0.8550

By supplement to this amendment filed on October 1, 1993, Applicant stated that Phase II facilities are estimated to cost \$70,044,000 and would include the following:

(a) approximately 3.19 miles of 24" pipeline loop and 10 miles of 30" pipeline loop between Lebanon, Ohio, and Five Points, Ohio;

(b) approximately 5.5 miles of 30" pipeline loop between Five Points, Ohio, and Somerset, Ohio;

(c) upgrade station piping at the Somerset Compressor Station, Ohio;

(d) approximately 4,500 HP of additional compression at its Holbrook Compressor Station, Ohio;

(e) approximately 2 miles of 36" pipeline loop between Holbrook, Ohio, and Uniontown, Pennsylvania;

(f) approximately 3.75 miles of 36" pipeline loop between Uniontown, Ohio, and Bedford, Pennsylvania;

(g) approximately 5.97 miles of 36" pipeline loop between Bedford, Pennsylvania, and Chambersburg, Pennsylvania;

(h) approximately 3.82 miles of 36" pipeline replacement between Eagle, Pennsylvania, and Lambertville, New Jersey;

(i) approximately 1.53 miles of 42" pipeline loop between Lambertville, New Jersey, and Linden, New Jersey.

The initial rates for Phase II service under Schedule FTS-6 are:

Rate Per Dekatherm

Reservation Charge \$26.965
 Authorized Overrun Charge \$0.8865

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Texas Gas Transmission Corp.

[Docket No. CP92-734-001]

Take notice that on September 2, 1993, Texas Gas Transmission Corporation (Applicant), Post Office Box 1160, Owensboro, Kentucky 42302, filed pursuant to section 7(c) of the Natural Gas Act, an amendment to its September 25, 1992 application for a certificate of public convenience and necessity in Docket No. CP92-734-000.

In this Amendment applicant seeks Commission authorization to delay the proposed in-service date to November 1, 1995, and to construct facilities different than those originally proposed.

By this Amendment Applicant proposes to provide firm transportation services commencing on November 1, 1995 for The Power Authority of the State of New York (NYPA) in the amount of 35,461 MMBtu/day. This amount would decrease to 35,247 MMBtu/day on November 1, 1996.¹ Applicant states that these volumes reflect a change in the fuel required to transport NYPA's gas through Texas Eastern Transmission Corporation's system.

Applicant also proposes to reposition the looping described in Docket No. CP92-734-000 in order to avoid complications along the pipeline route. Applicant states that these include urban congestion in Jefferson County, Kentucky and rough terrain in Ohio County, Kentucky. To provide service to

¹ Applicant states that the quantity of gas it delivers to Texas Eastern Transmission Corporation at Lebanon, Ohio, for NYPA's account decreases on November 1, 1996, because the mix of pipeline and compression is different at the beginning of each winter season. Texas Eastern Transmission Corporation is installing a greater proportion of compression to begin the 1995 winter and a greater proportion of pipeline to begin the 1996 winter.

NYPA Applicant now proposes the following facilities:

1. 3.18 miles of 36-inch looping, beginning at Mile 476+4393, and extending northward to Mile 480+4509;

2. 2.89 miles of 36-inch pipeline looping, beginning at Mile 572+1790 and extending northward to Mile 575+1200, Jefferson County, Kentucky;

3. 4.10 miles of 36-inch pipeline looping, beginning at Mile 604+695, and extending northward to Mile 608+2223, Oldham County, Kentucky;

4. 4.20 miles of 36-inch pipeline looping, beginning at Mile 702+0385, and extending southward to Mile 697+4609, Butler County, Ohio.

The total cost of these facilities is estimated to be \$20,900,000. The Applicant proposes to charge a Zone SL-4 rate and a Zone 1-4 rate.

Zone SL-4

Demand Charge—\$9.77

Commodity Charge—\$.0411

Zone 1-4

Demand Charge—\$8.47

Commodity Charge—\$.0386

The Commission staff will convene a technical conference, if necessary, after expiration of the protest/intervention period to allow all active parties the opportunity to identify and address substantive, non-environmental issues.

Comment date: November 4, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25828 Filed 10-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES91-47-001]

Iowa Electric Light and Power Co.; Amended Application

October 15, 1993.

Take notice that on October 14, 1993, Iowa Electric Light and Power Company (Iowa Electric) filed an amendment to said application with the Commission seeking an extension to November 30, 1993, of the period during which Iowa Electric may, in accordance with the terms and conditions set forth in the Commission's Letter Order, issued August 20, 1991, authorizing the issuance of not more than \$100 million of First Mortgage Bonds and guarantee not more than \$17 million of Tax-Exempt Bonds, over a two-year period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25825 Filed 10-20-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4793-1]

Access to Confidential Business Information By Booz-Allen, & Hamilton, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to conduct reviews of selected Superfund recipients' procurement, property, financial, and general administrative management systems. During the review of these systems, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data five working days from the date of this notice.

ADDRESSES: Send or deliver written comments to Richard A. Johnson, Grants Policy and Procedures Branch, Grants Administration Division (3903F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Policy and Procedures Branch, Grants Administration Division, 401 M St. SW., Washington, DC 20460. Telephone (202) 260-5268.

SUPPLEMENTARY INFORMATION: Under Contract 68-W3-0002, Delivery Order 004, Booz-Allen, & Hamilton, Inc., will be conducting on-site technical assistance reviews of the Superfund financial, property, procurement, and administrative systems in the States of Illinois and Montana, and of the Puallup Indian Tribal Government to determine whether their systems comply with EPA regulations and policies. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) *Expenditures.* Review expenditure documentation such as expense reports, time sheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature, and reconciliation of time sheets to expense reports;

(2) *Financial Reports.* Review financial drawdowns, Financial Status Reports, and internal status reports to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required;

(3) *Procurement Transactions.* Review a sample of bid requests and/or requests for proposals, and the resulting contracts to determine compliance with Superfund procurement requirements;

(4) *Property.* Review a sample of property purchased in whole or in part with Superfund money (including how the property was used) to determine the degree of compliance with Superfund property requirements to acquire, manage, and dispose of the property; and

(5) *Recordkeeping Procedures.* Review a sample of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specified time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be Confidential Business Information.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to Confidential Business Information to provide the support and services required under this Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc., will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: October 15, 1993.

Sallyanne Harper,

Acting Assistant Administrator for Administration and Resources Management.
[FR Doc. 93-25929 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180903; FRL-4646-6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 21 States as listed below. There were also 14 crisis exemptions initiated by various States. These exemptions, issued during the months of June and July 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Arizona, Minnesota, Nebraska, and North Carolina Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703-308-8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of bifenthrin on melons to control the sweet potato whitefly; June 30, 1993, to May 19, 1994. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on strawberries to control powdery mildew; July 28, 1993, to July 27, 1994. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of methyl bromide on carrots to control nematodes; July 30, 1993, to July 29, 1994. (Libby Pemberton)

4. California Environmental Protection Agency, for the use of hexakis on watermelons to control mites; July 23, 1993, to October 15, 1993. (Andrea Beard)

5. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on tomatoes to control powdery mildew; June 18, 1993, to June 17, 1994. California had initiated a crisis exemption for this use. (Susan Stanton)

6. California Environmental Protection Agency for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to September 30, 1993. (Andrea Beard)

7. Colorado Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to September 15, 1993. Colorado had initiated a crisis exemption for this use. (Andrea Beard)

8. Georgia Department of Agriculture for the use of permethrin on southern peas to control the cowpea curculio; June 4, 1993, to October 31, 1993. (Andrea Beard)

9. Hawaii Department of Agriculture for the use of hydramethylnon on pineapples to control big-headed and Argentina ants; June 10, 1993, to June 9, 1994. (Libby Pemberton)

10. Idaho Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to September 1, 1993. (Andrea Beard)

11. Kansas State Board of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

12. Louisiana Department of Agriculture and Forestry for the use of cyfluthrin on sugarcane to control the sugarcane borer; July 12, 1993, to September 15, 1993. (Libby Pemberton)

13. Maryland Department of Agriculture for the use of clomazone on snap beans, watermelons, and cucumbers to control annual broadleaf and grassweeds; June 15, 1993, to August 31, 1993. (Libby Pemberton)

14. Michigan Department of Agriculture for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to September 1, 1993. (Andrea Beard)

15. Minnesota Department of Agriculture for the use of triclopyr on aquatic sites to control purple loosestrife; July 19, 1993, to September 30, 1993. (Libby Pemberton)

16. Nebraska Department of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

17. New Mexico Department of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

18. New Mexico Department of Agriculture for the use of cypermethrin on dry-bulb onions to control thrips; June 18, 1993, to July 31, 1993. New Mexico had initiated a crisis exemption for this use. (Andrea Beard)

19. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to September 30, 1993. (Libby Pemberton)

20. North Dakota Department of Agriculture for the use of sethoxydim on crambe to control volunteer grains; July 19, 1993, to July 31, 1993. North Dakota

had initiated a crisis exemption for this use. (Susan Stanton)

21. Oklahoma Department of Agriculture for the use of bifenthrin on field corn to control mites; July 28, 1993, to August 25, 1993. (Andrea Beard)

22. Oregon Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to November 1, 1993. (Andrea Beard)

23. Oregon Department of Agriculture for the use of bifenthrin on raspberries to control weevils; June 10, 1993, to August 15, 1993. (Andrea Beard)

24. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to September 10, 1993. (Libby Pemberton)

25. Pennsylvania Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to October 31, 1993. (Libby Pemberton)

26. Texas Department of Agriculture for the use of esfenvalerate on sorghum to control sorghum midge/headworms; June 10, 1993, to September 30, 1993. (Libby Pemberton)

27. Texas Department of Agriculture for the use of chlorothalonil on mushrooms to control *verticillium* diseases; July 1, 1993, to June 30, 1994. (Susan Stanton)

28. Texas Department of Agriculture for the use of bifenthrin on corn to control mites; July 2, 1993, to September 15, 1993. (Andrea Beard)

29. Texas Department of Agriculture for the use of cyromazine on peppers (bell, chili, and jalapeno) to control vegetable leafminers; June 18 1993, to December 31, 1993. (Susan Stanton)

30. Washington Department of Agriculture for the use of lambda cyhalothrin on dry-bulb onions to control thrips; June 9, 1993, to September 1, 1993. (Andrea Beard)

31. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; June 18, 1993, to September 30, 1993. (Libby Pemberton)

32. Washington Department of Agriculture for the use of bifenthrin on raspberries to control weevils; June 10, 1993, to August 10, 1993. (Andrea Beard)

33. Washington Department of Agriculture for the use of esfenvalerate on cranberries to control black vine weevils; June 25, 1993, to August 31, 1993. (Susan Stanton)

34. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of cypermethrin on dry-bulb onions to control thrips;

June 18, 1993, to September 30, 1993. (Andrea Beard)

35. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of vinclozolin on green beans to control white mold; July 23, 1993, to September 15, 1993. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on July 2, 1993, for the use of sodium chlorate on wheat to control weeds. This program has ended. (Susan Stanton)

2. Colorado Department of Agriculture on July 29, 1993, for the use of bifenthrin on corn to control mites. This program has ended. (Andrea Beard)

3. Iowa Department of Agriculture and Land Stewardship on July 20, 1993, for the use of propiconazole on seed corn to control foliar diseases. This program has ended. (Andrea Beard)

4. Louisiana Department of Agriculture on July 19, 1993, for the use of lambda cyhalothrin on sorghum to control sorghum midge. This program is expected to last until December 31, 1993. (Libby Pemberton)

5. Minnesota Department of Agriculture on July 21, 1993, for the use of propiconazole on corn to control foliar diseases. This program is expected to last until September 30, 1993. (Andrea Beard)

6. Montana Department of Agriculture on June 1, 1993, for the use of carbaryl on canola to control flea beetles. This program has ended. (Andrea Beard)

7. Nevada Department of Agriculture on July 6, 1993, for the use of lambda cyhalothrin on dry-bulb onions to control thrips. This program has ended. (Andrea Beard)

8. New Mexico Department of Agriculture on July 30, 1993, for the use of cyfluthrin on chili peppers to control the pepper weevil. This program will end on December 31, 1993. (Libby Pemberton)

9. North Dakota Department of Agriculture on June 23, 1993, for the use of sethoxydim on crabe to control volunteer grains. This program has ended. (Susan Stanton)

10. Ohio Department of Agriculture on July 19, 1993, for the use of cypermethrin on dry-bulb onions to control thrips. This program has ended. (Andrea Beard)

11. Oregon Department of Agriculture on June 10, 1993, for the use of chlorpyrifos on hops to control aphids. This program has ended. (Andrea Beard)

12. Texas Department of Agriculture on June 18, 1993, for the use of lambda cyhalothrin on rice to control armyworms. This program has ended. (Andrea Beard)

13. Washington Department of Agriculture on June 3, 1993, for the use of chlorpyrifos on hops to control aphids. This program has ended. (Andrea Beard)

14. Washington Department of Agriculture on July 6, 1993, for the use of chlorothalonil on rhubarb to control *Ramularia* leaf/stalk spot. This program has ended. (Susan Stanton)

EPA has denied specific exemption requests from the:

1. Arizona Department of Agriculture for the use of imidacloprid on cotton to control the sweet potato whitefly. A notice published in the *Federal Register* of June 10, 1993 (58 FR 32534), and no comments were received. Available data do not show that imidacloprid is significantly more effective at controlling the sweet potato whitefly than the currently registered alternatives. (Andrea Beard)

2. Minnesota Department of Agriculture for the use of norsulfuron on sweet corn to control wild proso millet. Since wild proso millet has been a serious weed pest in Minnesota since 1970, and the registered pesticides have never provided adequate or consistent control, EPA could not make a finding that the situation is nonroutine. (Andrea Beard)

3. Nebraska Department of Agriculture for the use of methyl 3-chloro-5-(4,6-dimethoxyppyrimidin-2-yl carbamoylsulfamoyl)-1-methyl pyrazole-4-carboxylate, also known as "MON 12000" (trade name Permit) on grain sorghum to control broadleaf weeds. A notice published in the *Federal Register* of April 14, 1993 (58 FR 19426), and no comments were received. Although there is an effective registered pesticide available (atrazine) the applicant requested an exemption for use of this unregistered pesticide because of potential risk of ground and surface water contamination with atrazine. EPA believes that the regulations governing section 18 do not allow for authorization of exemptions based solely upon a determination that an unregistered pesticide is environmentally preferable to a pesticide which is registered for that use. (Andrea Beard)

4. North Carolina Department of Agriculture for the use of iprodione on apples to control alternaria blotch. The Agency has denied this emergency exemption because, under the May 7, 1993, Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) policy on the Delaney Clause and section 18 emergency exemption under FIFRA, EPA cannot find progress toward registration of iprodione on apples.

Since iprodione is likely to meet the Delaney Clause's standards for inducing cancer in animals and under existing EPA policy the use of iprodione on apples would need a food additive regulation. (Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: September 29, 1993.

Douglas D. Campit,

Director, Office of Pesticide Programs.

[FR Doc. 93-25940 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

[PF-582; FRL-4648-7]

Uniroyal Chemical Co.; Amended Pesticide Petition and Amended Food Additive Petition for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Uniroyal Chemical Co. the filing of an amendment to pesticide petition (PP) 6F3372 and food additive petition (FAP) 6H5497 proposing to establish various tolerances for residues of the fungicide triflumizole in or on various raw agricultural commodities.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-582], to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Clarence Lewis, Acting Product

Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 261, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6117.

SUPPLEMENTARY INFORMATION: EPA has received from the Uniroyal Chemical Co., 74 Amity Rd., Bethany, CT, 06542-3402, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 6F3372 and food additive petition (FAP) 6H5497, which appeared in the Federal Register of March 19, 1986 (51 FR 9514). The original petitions are described below.

1. **PP 6F3372.** Proposed amending 40 CFR part 180 by establishing tolerances for the combined residues of the fungicide triflumizole, 1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole and its aniline-containing metabolites 4-chloro-2-trifluoromethylaniline and N-(4-chloro-2-trifluoromethylphenyl)-propoxyacetamide, in or on the following commodities: apples at 0.1 part per million (ppm); cattle, fat, meat and meat byproducts (mby) at 0.05 ppm; grapes at 0.3 ppm; hogs, fat, meat and mby at 0.05 ppm; milk at 0.05 ppm; pears at 0.1 ppm; and poultry, eggs, fat, meat and mby at 0.05 ppm. The proposed method for determining residues is chromatography and mass spectroscopy.

2. **FAP 6H5497.** Proposed amending 21 CFR part 193 (redesignated as 40 CFR part 185) by establishing a regulation permitting the combined residues of the fungicide described in PP 6F3372 in or on the agricultural commodities as follows: apples, dried at 3.0 parts per million (ppm); apple pomace, dry at 1.0 ppm; apple pomace, wet at 3.0 ppm; grape juice at 1.0 ppm; grape pomace, dry at 1.0 ppm; grape pomace, wet at 4.0 ppm; raisins at 1.0 ppm; and raisin waste at 2.0 ppm.

Uniroyal has submitted amendments to the above-described petitions to change the chemical expression for the fungicide. Uniroyal proposes to amend PP 6F3372 and FAP 6H5497 to establish the tolerances for the combined residues of the fungicide triflumizole (1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole), the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound.

Authority: 7 U.S.C. 346a and 371.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: September 28, 1993.

Stephanie Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-25938 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00367; FRL-4650-2]

Subdivision F Hazard Evaluation--Humans and Domestic Animals; Proposed New Guideline Section 85-3 Dermal Absorption Studies of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments.

SUMMARY: The Environmental Protection Agency is making available, for public comment, a revised proposed guideline for Dermal Absorption Studies of Pesticides. This revised guideline is based on the proposed guideline as presented in the Federal Register of March 13, 1991. This guideline, when final, will serve to formalize the protocol on dermal absorption that has been in experimental development since the publication of Subdivision F in October 1982. A copy of the revised guideline, a background document which provides the history and scientific rationale for the guideline and a document presenting the revisions and rationale therefore are available at the address listed below for the Public Docket and Freedom of Information Section.

DATE: Comments must be received on or before December 6, 1993.

ADDRESSES: Submit three copies of written comments, identified with the docket control number "OPP-00367" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person deliver comments to: Public Docket and Freedom of Information Section, Field Operations Division, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5805.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information"

(CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 1132 at the address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert P. Zendzian, Health Effects Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1004, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5495.

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines, Subdivision F, describe protocols for performing toxicology and related tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Some of the tests are also used in tolerance reviews under the Federal Food, Drug, and Cosmetic Act (FFDCA). Subdivision F was proposed for public comment in 1978 and published in October 1982. At that time the Agency published the criteria for performing a dermal absorption study on a pesticide and reserved a line item, Section 85-3, for a guideline on Dermal Absorption Studies of Pesticides.

On Wednesday, March 13, 1991 a notice of request for comments on the proposed dermal absorption guideline was published in the *Federal Register* (56 FR 10556). Seven written comments were received during a 90-day comment period. Changes have been made in the proposed guideline based on these comments and information received subsequent to the *Federal Register* announcement. A background document has been prepared which presents and addresses the comments received. The modifications of the guideline are mainly explanatory, enlarging or modifying points that were found to be obscure or misleading. Some critical changes have been made in experimental design, particularly in the section on additional dermal absorption studies.

In developing this proposed guideline, the Agency has relied on data generated in a large number of dermal absorption studies performed and submitted by companies which have registered pesticides. As of April 1993

these numbered 181 submitted studies on 116 chemicals. Since this data is not available in the scientific literature, the background documents present and reference critical information supporting the proposed guideline. For these reasons, copies of both background documents are included in the information package. It is strongly recommended that both documents be read before attempting to comment on the proposed guideline. In addition to general background information, each document contains an item by item discussion of the guideline with data presented to support critical points. Individuals reviewing the proposed guideline should follow paragraph by paragraph the comments in the background documents in order to understand the rationale for the guideline.

All interested parties are encouraged to submit comments on the proposed guideline for dermal absorption itself. Specific comments should reference the specific number and paragraph or subparagraph of the proposed guideline. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to the Agency in support of registration and unpublished data. Citations must be sufficiently detailed so as to allow the Agency to obtain copies of the original documents and unpublished data supplied in sufficient detail to allow their evaluation.

Comments on the proposed guideline will be considered by the Agency and such modifications of the guideline as are considered to be of merit will be incorporated into the guideline. The draft modifications and the public comments will be presented to the FIFRA Scientific Advisory Panel at a public meeting for its comments before being published in a final form. Notice of this meeting will be published in the *Federal Register* and all interested parties will be offered the opportunity to present written and public comments to the FIFRA Scientific Advisory Panel at the public meeting.

List of Subjects

Environmental protection.

Dated: October 7, 1993.

Penelope A. Fenner-Crisp

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 93-25937 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30354; FRL-4650-7]

Certain Companies; Applications to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products, containing a new active ingredient not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by November 22, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30354] and the registration/file symbol to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 22, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 22, Cynthia Giles-Parker, Rm. 229, CM #2, (703-305-5540).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing a new active ingredient not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100-TUN. Applicant: Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product name: Dividend Fungicide. Fungicide. Active ingredient: Difenocenzazole [(2S,4R) / (2R,4S)] / [(2R,4R/2S,4S)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, at 32.8 percent. Proposed classification/Use: General. A seed treatment for the control of diseases of wheat and spring barley. (PM 22)

2. File Symbol: 100-TGO. Applicant: Ciba-Geigy Corporation. Product name: Technical CGA-169374. Fungicide. Active ingredient: Difenocenzazole [(2S,4R) / (2R,4S)] / [(2R,4R/2S,4S)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, at 92 percent. Proposed classification/Use: General. For formulation into end-use fungicide products. (PM 22)

II. Product Involving a Changed Use Pattern

File Symbol: 53219-T. Applicant: Mycogen Corporation, 5451 Oberlin Drive, San Diego, CA 92121. Product name: MYX-6121 Herbicide. Herbicide. Active ingredients: Pelargonic acids at 57 percent and related fatty acids (C₆-C₁₂) at 3 percent. Proposed classification/Use: General. To include in its presently registered food processing and dairy equipment use indoors, a new outdoor noncrop use. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of subjects

Environmental protection, Pesticides and pests, product registration.

Dated: October 8, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-25935 Filed 10-20-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30287B; FRL-4643-4]

Unocal Corp.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Unocal Corp., to conditionally register the pesticide product Enzone containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-305-5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of March 30, 1988 (53 FR 10284), which announced that Unocal Chemical Division, Unocal Corp., 1201 W. 5th St., Los Angeles, CA 90017, had submitted an application to conditionally register the nematicide/fungicide product GY-81 (EPA File Symbol 612-L) containing the active ingredient sodium tetrathiocarbonate at 31.8 percent, an active ingredient not included in any previously registered product.

The application as originally applied was for the product "GY-81." The application was approved on June 17, 1993, as "Enzone" (EPA Registration Number 612-5) for management of plant-parasitic nematodes, *phylloxera*, and oak root fungus on grapes and for the management of citrus nematodes, oak root fungus, and phytophthora root rot on grapefruit, lemons, and oranges.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where

certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of sodium tetrathiocarbonate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of sodium tetrathiocarbonate during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on sodium tetrathiocarbonate.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in

accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of subjects

Environmental protection, Pesticides and pest, product registration.

Dated: September 21, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-25936 Filed 10-20-93; 8:45 am]

BILLING CODE 8560-50-F

[PF-581; FRL-4645-7]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. It also announces three amended petitions.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505W),

Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Addresses
George LaRocca (PM-13).	Rm. 202, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM-18).	Rm. 213, CM #2, 703-305-7690.	Do.
Dennis Edwards (PM-19).	Rm. 207, CM #2, 703-305-6386.	Do.
Clarence Lewis (Acting PM-21).	Rm. 227, CM #2, 703-305-6117.	Do.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2, 703-305-5540.	Do.
JoAnne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-305-6800.	Do.
Hoyt Jamerson (PM-43).	6th Fl., CS #1, 703-308-8783.	2805 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PPs) and food/feed additive petitions (FAPs) as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 3F4167.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of tebuconazole (a-[2-(4-chlorophenyl)ethyl]-a-(1,1-dimethylethyl)-H-1,2,4-triazole-1-ethanol) in or on bananas at 0.05 part per million. (PM-21)

2. *PP 3F4169.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of

imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its metabolites in or on apples, fruit at 1.0 ppm, cotton, seed at 3.5 ppm, cotton, forage at 30.0 ppm, potatoes, tuber at 0.4 ppm, milk at 0.05 ppm, eggs at 0.02 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm, and meat, fat, and meat byproducts of poultry at 0.02 ppm. (PM-19)

3. *PP 3F4174.* Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of chlorethoxyfos in or on corn, field, forage at 0.01 ppm, corn, field, fodder at 0.01 ppm, corn, field, silage at 0.01 ppm, corn, pop, forage at 0.01 ppm, corn, pop, fodder at 0.01 ppm, corn, grain at 0.01 ppm, corn, sweet (kernels, cob with husk removed) at 0.01 ppm, corn, sweet, forage at 0.01 ppm, and corn, sweet, fodder at 0.01 ppm. (PM-19)

4. *PP 3F4177.* Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of dimethenamid (2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl-acetamide) in or on soybean grain at 0.01 ppm. (PM-22)

5. *PP 3F4179.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of alachlor (2-chloro-2'-6'-diethyl-N-(methoxymethyl)-acetanilide) and its metabolites 2,6-diethylanilide (DEA) and 2-(1-hydroxyethyl)-6-ethylaniline (HEEA) in or on dry beans forage and fodder at 5.0 ppm. (PM-25)

6. *PP 3F4182.* Hoechst Celanese Corp., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of fenoxaprop-ethyl, (±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)phenoxy]propanoate], and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on barley grain at 0.05 ppm and barley straw at 0.10 ppm. (PM-23)

7. *PP 3F4183.* Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of desmedipham (ethyl-m-hydroxycarbanilate carbanilate) in or on sugar beet roots at 0.2 ppm and sugar beet tops at 15.0 ppm. (PM-25)

8. *PP 3F4185.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-

1189, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of flumetsulam (N-(2,6-difluorophenyl)-5-methyl-(1,2,4)-triazole[1,5a]-pyrimidine-2-sulfonamide) in or on corn (except pop and sweet) at 0.05 ppm, corn, fodder at 0.05 ppm, corn, forage at 0.05 ppm, and corn, grain at 0.05 ppm. (PM-23)

9. *PP 3F4186.* Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of fenprothrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane-carboxylate) in or on strawberries at 2 ppm and tomatoes (fresh market, Florida only) at 0.5 ppm. (PM-13)

10. *PP 3F4187.* Monsanto Co., 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-[(2-sulfoethyl)amino] carbonyl-6-(trifluoromethyl) and expressed as parent equivalents, in or on citrus whole fruit at 0.05 ppm, cotton seed at 0.05 ppm, and cotton forage at 0.2 ppm. (PM-23)

11. *PP 3F4188.* DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of chlopyrifos (O,O-diethyl O-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on barley grain at 0.3 ppm, barley forage at 1.5 ppm, and barley straw at 1.5 ppm. (PM-19)

12. *PP 3F4193.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of Permit Herbicide (methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylamino sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents), in or on corn, field grain at 0.1 ppm, corn, field forage at 0.3 ppm, corn, field fodder at 1.3 ppm, and grain sorghum (milo) grain at 0.02 ppm (lower limit of method validation), grain sorghum (milo) forage at 0.07 ppm,

grain sorghum (milo) stover at 0.08 ppm, grain sorghum (milo) silage at 0.14 ppm, grain sorghum (milo) hay, no tolerance proposals. (PM-23)

13. *PP 3F4194.* Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of fenbuconazole, (RH-7592) [alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile], RH-9129 and RH-9130, the diastereo-metric lactone metabolites of fenbuconazole [5-(4-chlorophenyl)-dihydro-3-phenyl-3-(methyl-1H-1,2,4-triazole-1-yl)-2-3H-furanone] in or on almond nuts at 0.05 ppm and almond hulls at 3.0 ppm. (PM-22)

14. *PP 3F4196.* Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the New Biochemical Pesticide, Plant Floral Volatile Attractant Compounds: cinnamaldehyde, cinnamyl alcohol, 4-methoxycinnamaldehyde, 3-phenyl propanol, 4-methoxyphenethyl alcohol, indole and 1,2,4-trimethoxybenzene when used at specific application rates on specific raw agricultural commodities. (PM-18)

15. *PP 3F4204.* Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.436, by establishing a regulation to permit the residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate) in or on sugarcane at 0.05 ppm. (PM-13)

16. *PP 3F4215.* Du Pont Co., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.428, by establishing a regulation to permit the combined residues of the herbicide metsulfuron methyl (methyl 2-[[[(4-methoxy-6-methyl-1, 3, 5-triazin-2-yl)amino] carbonyl]amino] sulfonyl]benzoate) and its metabolite methyl 2-[[[(4-methoxy-6-methyl-1, 3, 5-triazin-2-yl)amino]carbonyl] amino] sulfonyl]-4-hydroxybenzoate in or on sorghum grain at 0.1 ppm, sorghum forage at 0.3 ppm, sorghum fodder at 0.3 ppm, and sorghum hay at 0.3 ppm. (PM-25)

17. *PP 3F4222.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the fungicide tebuconazole (alpha-[2-(4-chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-H-1,2,4-triazole-1-

ethanol) in or on cherries at 3.5 ppm and peaches at 1.0 ppm. (PM-21)

18. *PP 3F4225.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of triasulfuron, 3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy)phenylsulfonylurea, in or on grass forage at 7.0 ppm and grass hay at 2.0 ppm. (PM-25)

19. *PP 3F4229.* Rohm & Haas Co., Independence Mall, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on peanut meat at 0.05 ppm, peanut vine at 0.05 ppm, peanut hay at 0.05 ppm, and peanut hulls at 0.10 ppm. (PM-23)

20. *PP 3F4231.* Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180, by establishing a regulation to permit the residues of imidacloprid, 1-[[6-chloro-3-pyridinyl] methyl]-N-nitro-2-imidazolidinimine, and its metabolites in or on fruiting vegetables (including tomato, eggplant, and pepper), at 1.0 ppm, brassica (cole) leafy vegetables (including broccoli, cauliflower, brussels sprouts, and cabbage) at 3.5 ppm, lettuce (head and leaf) at 3.5 ppm, grape, fruit at 1.0 ppm, milk at 0.1 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.3 ppm. (PM-19)

21. *PP 3F4232.* Zeneca AG Products, P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of acetochlor and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxy ethyl methyl aniline (HEMA) moiety in or on the following raw agricultural commodities, to be analyzed as acetochlor, EMA and HEMA and expressed as acetochlor equivalents: soybean grain at 0.1 ppm, soybean forage at 0.7 ppm, soybean hay at 1.1 ppm, wheat forage at 0.5 ppm, wheat straw at 0.1 ppm, sorghum forage at 0.1 ppm, sorghum fodder at 0.1 ppm, sorghum silage at 0.05 ppm, and sorghum hay at 0.2 ppm. (PM-25)

22. *PP 3F4233.* Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the

application of its octanoic and heptanoic acid esters in or on cotton seed at 0.04 ppm. (PM-25)

23. *PP 3F4237*. Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 180 by establishing a regulation to permit the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzimidazole) resulting from the application of its octanoic and heptanoic acid ester in or on wheat forage at 3.0 ppm, wheat straw at 2.0 ppm, corn forage at 10.0 ppm, corn fodder at 0.2 ppm, barley forage at 4.0 ppm, barley straw at 4.0 ppm, sorghum forage at 1.0 ppm, sorghum hay at 1.0 ppm. (PM-25)

24. *PP 3F4238*. Zeneca AG Products, Concord Pike and New Murphy Rd., P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide (containing glyphosate-trimesium (formerly SC-0224 of sulfonate)) in or on stone fruit. (PM-25)

25. *PP 3F4251*. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27819-8300, proposes to amend 40 CFR 180.368 by establishing a regulation to permit residues of the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide] and its metabolites determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodities grass seed screenings at 0.1 ppm, grass forage at 30.0 ppm, and grass hay (straw) at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-23)

26. *FAP 3H5647*. Arizona Department of Agriculture, 1688 West Adams, Phoenix, AZ 85007, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of fenproprathrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on cotton seed oil at 3 ppm and cotton soapstock at 2 ppm. (PM-13)

27. *FAP 3H5648*. Valent, U.S.A., Corp., 1333 N. California Blvd., Suite 600, P. O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of fenproprathrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on cotton seed oil at 3 ppm. (PM-13)

28. *FAP 3H5649*. ICI Americas, Inc., Agricultural Products, Wilmington, DE 19897, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of paraquat, 1,1'-dimethyl-4, 4'-bipyridinium-ion, in or on alfalfa meal at 12 ppm. (PM-25)

29. *FAP 3H5650*. Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 186, by establishing a feed additive regulation to permit residues of glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on rape (canola) meal at 25 ppm. (PM-25)

30. *FAP 3H5651*. McLaughlin, Gormley, King Co., 8810 Tenth Avenue North, Minneapolis, MN 55427, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of (RS)-2-methyl-4-oxo-3-(2-propynyl)cyclopent-2-enyl(1RS)-cis, trans-chrysanthemate [ETOC; Prallethrin] in food-handling establishments at 1.0 ppm. (PM-13)

31. *FAP 3H5652*. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of fenbuconazole (alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) in or on apple processed fractions, apple juice at 0.8 ppm, apple pomace (wet) at 0.8 ppm, and apple pomace (dry) at 3.0 ppm. (PM-22)

32. *FAP 3H5654*. Zoecon Co., 12200 Denton Drive, Dallas, TX 75234, proposes to amend 40 CFR part 185 by establishing a food/feed additive regulation to permit residues of insect growth regulator methoprene at 10 ppm for cereal grain milled fractions (except flour and rice hulls) and 25 ppm on rice hulls. (PM-18)

33. *FAP 3H5655*. Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, and its 6-chloronicotinic acid metabolites in or on apple, pomace (wet) at 2.0 ppm, apple pomace (dry) at 7.0 ppm, potato chips at 0.7 ppm, potato dried at 1.5 ppm, and cotton seed meal at 5.5 ppm. (PM-19)

34. *FAP 3H5656*. IR-4 Project Coordinator, Office of IR-4, Cook College, P.O. Box 231, Rutgers State

University of NJ 08903-0231, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of sethoxydim (2-[(1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on parsley (dried) at 25 ppm. (PM-43)

35. *FAP 3H5658*. Nor-Am Chemical Co., 3509-Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of flutolanil (N-[3-(1-methylethoxy)-phenyl]-2(trifluoromethyl)-benzamide) and its metabolites converted to 2-trifluoromethyl benzoic acid methyl ester in the following processed food commodities when present therein as a result of application of the fungicide to growing crops, in or on polished (hulled) rice at 0.50 ppm, rice hulls at 7.0 ppm, rice bran at 2.0 ppm, and grain dust (rice) at 10.0 ppm. (PM-21)

36. *FAP 3H5659*. Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of the fungicide hexakis ([2-methyl-2-phenylpropyl]distannoxane) and its organotin metabolites calculated as hexakis, [2-methyl-2-phenylpropyl] distannoxane be established on citrus oil at 140 ppm and increased on dried citrus pulp from 35 ppm to 100 ppm, increased on dried apple pomace from 75 ppm to 100 ppm, and increased on raisin waste from 20 ppm to 80 ppm. (PM-19)

37. *FAP 3H5660*. Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of the insecticide methomyl (S-methyl N-[methycarbamoyl] thioacetimidate) in or on wheat bran at 2.0 ppm and dehydrated citrus pulp at 6.0 ppm. (PM-19)

38. *FAP 3H5661*. Valent, U.S.A., Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of fenproprathrin, alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in or on tomato cannery waste at 5 ppm. (PM-13)

39. *FAP 3H5662*. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of chlorpyrifos (O,O-diethyl O-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on barley milling fractions (except flour) at 1 ppm. (PM-19)

40. *FAP 3H5663*. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of fenbuconazole (RH-7592) (alpha-(2-[4-chlorophenyl]-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole-1-propanenitrile) in or on almond nuts at 0.05 ppm and almond hulls at 3.0 ppm. (PM-22)

41. *FAP 3H5664*. Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR parts 185 and 186 by establishing a food and feed additive regulation to permit residues of ethephon plant growth regulator in or on apple pomace at 10.0 ppm and grape pomace at 8.0 ppm. (PM-22)

42. *FAP 3H5665*. Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of Resource, pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate, of Resource Herbicide, in or on soybean hulls at 0.02 ppm. (PM-23)

43. *FAP 3H5666*. Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of (Mon 21250-Genesis) [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt], (Mon 21200) and its metabolites [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazine carboxylic acid] in or on wheat milling fractions (except flour) at 375 ppm. (PM-22)

44. *FAP 3H5667*. Hoechst Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide deltamethrin: (1R,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester, and its major metabolites, trans-deltamethrin: (1S,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester and alpha-R-deltamethrin; (1R,3R)-3-

(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (R)-alpha-cyano-3-phenoxybenzyl ester, calculated as parent, in or on soybean hulls at 0.30 ppm. (PM-13)

45. *FAP 3H5668*. IR-4 Project Coordinator, Office of IR-4, Cook College, P.O. Box 231, Rutgers State University of NJ, New Brunswick, NJ 08903-0231, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on dried hops and spent hops at 5.0 ppm. (PM-43)

46. *FAP 3H5669*. American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, proposes to amend 40 CFR part 186, by establishing a feed additive regulation to permit the residues of Cadre Herbicide ((±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid as the ammonium salt and its metabolite, (±)-2-[4,5-dihydro-4-methyl-4-(methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxymethyl)-3-pyridinecarboxylic acid) in or on peanut hulls at 0.1 ppm. (PM-25)

47. *FAP 3H5670*. Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethylcyclopropane carboxylate) in or on sugarcane bagasse at 0.20 ppm and sugarcane molasses at 0.20 ppm. (PM-13)

48. *FAP 3H5671*. Biologic, Inc., 11 Lake Ave. Extension, Danbury, CT 06811, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the insecticide telflubenzuron (CME 134; NOMOLT), in or on potatoes processed fractions. (PM-21)

49. *FAP 3H5672*. Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit combined residues of flutolanil (N-[3-(1-methylethoxy)phenyl]-2-(trifluoromethyl)-benzamide) and its metabolites converted to 2-trifluoro-methyl benzoic acid methyl ester in the following processed food commodities when present therein as a result of application of the fungicide to growing crops, peanut meat at 1.0 ppm, peanut soapstock at 1.0 ppm, peanut crude oil at 0.20 ppm, and peanut refined oil at 0.20 ppm. (PM-21)

50. *FAP 3H5673*. Rod Products Co., 4600 Glencoe Ave., #4, Marina del Rey, CA 90292, proposes to amend 40 CFR part 185 by establishing a food additive regulation for an exemption from pesticide residues with respect to Bugchaser Insect Repellent Tablecloth, d-Limonene, Dihydro-5-Pentyl-2 (3H)-furanone, dihydro-5-heptyl-2(3H)-furanone, in the public interest. (PM-14)

51. *FAP 3H5674*. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene) and its metabolites containing the diphenyl ether linkage in or on peanut processed fractions, peanut meal at 0.05 ppm, peanut crude oil at 0.05 ppm, peanut soapstock at 0.05 ppm, and peanut refined oil at 0.05 ppm. (PM-23)

52. *FAP 3H5675*. Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites in or on tomato puree at 2.0 ppm, grape, raisin at 1.5 ppm, grape juice at 1.5 ppm, tomato pomace, wet at 2.0 ppm, tomato pomace, dry at 6.0 ppm, grape pomace, wet at 2.5 ppm, grape pomace, dry at 5.0 ppm, and grape raisin waste at 15.0 ppm. (PM-19)

53. *FAP 3H5676*. BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709-3525, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of mepiquat chloride in or on raisins at 5.0 ppm, raisin waste at 25.0 ppm, and grape pomace (wet and dry) at 3.0 ppm. (PM-22)

54. *FAP 3H5677*. BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709-3525, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of the herbicide Poast (2-[1(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide)) in or on rice straw at 0.5 ppm. (PM-25)

55. *FAP 3H5678*. Roussel UCLAF Corp., 95 Chestnut Ridge Rd., P.O. Box 30, Montvale, NJ 07645, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of tralomethrin ((1R,3S)-3-[(1',RS)(1',2',2-tetrabromoethyl)]-2,2-

dimethylcyclopropanecarboxylic acid (S)-alpha-cyano 3-phenoxybenzyl ester) to establish use in food/feed handling establishments. (PM-13)

56. *FAP 3H5679*. Zeneca AG Products, P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 185 by establishing a food/feed additive regulation to permit residues of the insecticide 1-alpha(S)-(±), 3-alpha(Z)-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate (lambda-cyhalothrin) for use in food-handling establishments. (PM-13).

57. *FAP 3H5680*. Janssen at Washington Crossing, 1125 Trenton-Harbourton Rd., P.O. Box 200, Titusville, NJ 08560-0200, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of the fungicide imazalil (1-(2-(2,4-dichlorophenyl)-2-(2-propenyl)ethyl)-1H-imidazole) and its metabolite 1-(2,4-dichlorophenyl)-2-(1H-imidazole-1-yl)-1-ethanol in or on citrus oil at 150 ppm and bananas (pulp) at 0.5 ppm. (PM-22)

Amended Petition

58. *PP 1F2507*. Duphar, B.V., P.O. 695, Lake Mary, FL 32746, proposes to amend 40 CFR 180.377 by establishing a regulation to permit residues of diflubenzuron (N-[[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide) in or on the raw agricultural commodities oranges, grapefruit, mandarins, and orange/grapefruit hybrids (such as Temple) at 0.50 ppm. The proposed analytical method for determining residues is gas chromatography with electron capture detector. Notice of filing for PP 1F2507 was originally published in the *Federal Register* of January 29, 1987 (52 FR 2960) and proposed establishing tolerances for diflubenzuron in or on grapefruit and oranges (whole) at 0.5 ppm. (PM-18)

59. *FAP 1H5301*. Duphar, B.V., P.O. 695, Lake Mary, FL 32746, proposes to establish regulations to permit residues of diflubenzuron (N-[[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide) in or on the food additive citrus oil at 75.0 ppm (40 CFR part 185) and in or on the animal feed citrus pulp at 1.0 ppm (40 CFR 186.2000). The proposed analytical method for determining residues is gas chromatography with electron capture detector. Notice of filing for FAP 1H5301 was originally published in the *Federal Register* of January 29, 1987 (52 FR 2960). (PM-18)

60. *PP 1F3991*. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, proposes to amend 40 CFR

180.417 by establishing a regulation to permit combined residues of the herbicide triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolite, 2-methoxy-3,5,6-trichloropyridine, in or on a number of agricultural commodities. In the *Federal Register* of March 24, 1993 (58 FR 15873), EPA issued a notice of amendments requested by DowElanco. EPA is giving notice that DowElanco has submitted further amendments proposing tolerances under 40 CFR 180.417 for triclopyr as follows: a tolerance for combined residues of the herbicide triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolites, 2-methoxy-3,5,6-trichloropyridine and 3,5,6-trichloro-2-pyridinol, in or on rice grain at 0.30 ppm and rice straw at 10.0 ppm; and triclopyr, (3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolite, 3,5,6-trichloro-2-pyridinol, in/on poultry meat, fat, and meat byproducts (except liver and kidneys) at 0.10 ppm and eggs at 0.05 ppm. (PM 25)

Authority: 7 U.S.C. 136a.

List of subjects

Environmental protection.

Dated: October 6, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-25941 Filed 10-20-93; 8:45 am]

BILLING CODE 6580-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 14, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0208

Title: Section 73.1870, Chief operators

Action: Extension of a currently approved collection

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 13,350 recordkeepers; 26,166 hours average burden per recordkeeper; 349,316 hours total annual burden

Needs and Uses: Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. Section 73.1870(c)(3) requires that the chief operator review the station records at least once a week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate any corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested persons to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Number: 3060-0310

Title: Section 76.12, Registration statement required

Action: Extension of a currently approved collection

Respondents: State or local governments, non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 600 responses; 0.25 hours average burden per response; 150 hours total annual burden

Needs and Uses: Section 76.12 requires that a registration statement be filed with the Commission before a system community unit shall be authorized to commence operation. A system community unit is a cable television system, or portion of a cable

television system, that operates or will operate within a separate and distinct community or municipal entity. The data is used by FCC staff to maintain complete records regarding cable systems and to ensure compliance with FCC rules and regulations.

Federal Communications Commission
LaVera F. Marshall,
Acting Secretary.
[FR Doc. 93-25809 Filed 10-20-93; 8:45 am]
BILLING CODE 6712-01-M

[FO Dockets 91-301 and 91-171; DA 93-1211]

Emergency Alerting Systems Test Results

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Formal field testing of proposed enhanced emergency alerting systems has been completed. The Western field testing was held June 27th through June 30th, 1993, in Denver, Colorado. The Eastern field testing was held September 12th through September 15th, 1993, in Pikesville, Maryland. Interested parties may review the test results and file comments on or before November 12, 1993, and reply comments by November 26, 1993.

FOR FURTHER INFORMATION CONTACT: The EBS staff at (202) 632-3906.

SUPPLEMENTARY INFORMATION:

Comments Solicited Regarding Emergency Alerting Systems Test Results in FO Dockets 91-301/91-171

October 6, 1993.

The Commission has completed formal field testing of proposed enhanced emergency alerting systems involved in FO Dockets 91-301/91-171. Proposed standards for the modernization of the Emergency Broadcast System (EBS) were outlined in the FCC's Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking, FO Docket 91-301/91-171, adopted by the Commission on September 17, 1992 and released on October 8, 1992. The Commission is proposing updating emergency alerting equipment to improve its early warning capacity and to make it compatible with cable systems and other new and future communications technologies.

The Western field testing was held June 27th through June 30th, 1993, in Denver, Colorado. The Eastern field testing was held September 12th through September 15th, 1993, in

Pikesville, Maryland. The results of the field tests have been condensed to two documents of approximately 500 pages each. They are entitled "Western" and "Eastern" Field Tests and are divided into (1) Plenary meetings, (2) Field testing, (3) Final reports, and (4) Miscellaneous.

Interested parties are invited to review the test results and file comments on or before November 12, 1993. Reply comments must be filed by November 26, 1993. Comments and reply comments filed in the docket must conform to the requirements of the Commission's Rules. Copies of the Western and Eastern field tests results are available for review in the Commission's Docket Branch, room 230, or may be obtained from the Commission's copy contractor, International Transcript Service, room 246, (202) 857-3824. Additional copies of the tests results and the voluminous supporting documents are available for review in the EBS office, 1919 M St. NW., room 720.

Any questions regarding this Public Notice may be directed to the EBS staff at (202) 632-3906.

Federal Communications Commission
LaVera F. Marshall,
Acting Secretary.
[FR Doc. 93-25808 Filed 10-20-93; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3625

Name: United World International, Inc.
Address: 1952 Lancaster, Grosse Pointe Woods, MI 48236

Date Revoked: September 3, 1993

Reason: Failed to maintain a valid surety bond.

License Number: 1435

Name: Donald K. Bollhorst dba Anchor International
Address: 1703 E. Joppa Rd., Baltimore, MD 21234

Date Revoked: September 29, 1993

Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.
[FR Doc. 93-25831 Filed 10-20-93; 8:45 am]
BILLING CODE 6730-01-M

[Petition No. P79-93]

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Transax Data on Behalf of Various Carriers; Filing

Notice is hereby given of the filing of a petition by the Transax Data on behalf of various carriers pursuant to 46 CFR 514.8(a), for temporary exemption from the October 8, 1993, electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than October 27, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on Mr. Michael A. Sarro, Conversion Control Account Manager, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 93-25830 Filed 10-20-93; 8:45 am]
BILLING CODE 6730-01-M

[Petition No. P80-93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing

In the Matter of Petition No. P80-93, Venezuelan American Maritime Association; Petition No. P81-93, United States/Central America Liner Association and the United States/Panama Freight Association.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the November 12, 1993, electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than October 27, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission,

Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on counsel for petitioners, Wayne R. Rohde, Esq., Sher & Blackwell, 1255 23rd Street, NW., suite 500, Washington, DC 20037-1194.

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 93-25829 Filed 10-20-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Allied Bank Capital, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 12, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Allied Bank Capital, Inc.*, Sanford, North Carolina; to acquire 100 percent of the voting shares of the successor to Peoples Savings Bank, SSB, Wilmington, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ANB Corporation*, Muncie, Indiana; to merge with Winchester Bancorporation, Winchester, Indiana, and thereby indirectly acquire Peoples Loan and Trust Bank, Winchester, Indiana.

2. *First Financial Corporation*, Terre Haute, Indiana; to merge with First Marshall Bancshares, Inc., Marshall, Illinois, and thereby indirectly acquire First National Bank, Marshall, Illinois.

3. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 20.32 percent of the voting shares of Southwest Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire Mount Greenwood Bank, Chicago, Illinois; Worth Bank and Trust, Worth, Illinois; First National Bank of Danville, Danville, Illinois; and Sun City, Bank, Sun City, Arizona.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Arkansas Bancshares, Inc.*, Arkadelphia, Arkansas; to acquire 100 percent of the voting shares of GCB Bancshares, Inc., Sheridan, Arkansas, and thereby indirectly acquire Grant County Bank, Sheridan, Arkansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Stockton Bancshares Inc.*, Stockton, Kansas; to merge with Western Bancshares, Inc., Stockton, Kansas, and thereby indirectly acquire Rooks County State Bank, Woodston, Kansas.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Southwestern Bancorp, Inc.*, Sanderson, Texas; to acquire 100 percent of the voting shares of Cross Plains Bancshares, Inc., Cross Plains, Texas, and thereby indirectly acquire Citizens State Bank, Cross Plains, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Pacific Rim Bancorporation*, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Golden Gate Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25854 Filed 10-20-93; 8:45 am]

BILLING CODE 6210-01-F

Community Bankshares, Inc.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Community Bankshares, Inc. Employee Stock Ownership Trust*, to acquire an additional 0.53 percent of the voting shares of Community Bankshares, Inc., Petersburg, Virginia, for a total of 10.21 percent, and thereby indirectly acquire The Community Bank, Petersburg, Virginia.

Board of Governors of the Federal Reserve System, October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25855 Filed 10-20-93; 8:45 am]

BILLING CODE 6210-01-F

NationsBank Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NationsBank Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, NationsBank Trust Company of New York, New York, New York, in providing fiduciary services for corporate and municipal entities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Anglo-American Bancshares Corporation*, Baton Rouge, Louisiana; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the United States and the United Kingdom.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Montreal, Quebec, Canada; Bankmont Financial Corporation, Inc., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to expand the activities of its subsidiary, Harris Investors Direct, Inc., Chicago, Illinois, to engage in the provision of investment advice and brokerage services for retail and

institutional customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National Commerce Bancorporation*, Memphis, Tennessee; to engage *de novo* through its subsidiary, National Commerce Finance Company, Germantown, Tennessee, in making, acquiring, and servicing consumer loans pursuant to § 225.25(b)(1); and acting as principal, agent, or broker in the sale of credit life, disability, involuntary unemployment and property insurance pursuant to §§ 225.25(b)(8)(i) and (b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee and those states which are contiguous to Tennessee.

Board of Governors of the Federal Reserve System, October 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25856 Filed 10-20-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families' (ACF) Office of Community Services (OCS) has submitted to the Office of Management and Budget (OMB) a request to extend the expiration date of five program announcements for OCS discretionary grants programs. Information collected from the requirements contained in these five program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants.

ADDRESSES: Copies of the information collection request may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401-6964.

Written comments and questions regarding the requested approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503. (202) 395-7316.

Information on Document

Title: Availability of Funds and Requests for Applications under the Office of Community Services' FY 1994 Discretionary Grants Programs
OMB No.: 0970-0062

Description: Information collected from the requirements contained in these five program announcements will be the sole source of information available to OCS in reviewing applications leading to awards of discretionary grants to eligible applicants. Previously, an information collection package was submitted for each program announcement until OMB recommended that OCS submit one information collection package covering all OCS program announcements.

The OCS Program Announcements covered in this Submission are:

I. Discretionary Grants Program

The Office of Community Services makes discretionary grants available in the areas of economic development, rural housing, community facilities, migrant and seasonal farm workers, and training and technical assistance.

II. Community Food and Nutrition Grants Program

The purpose of this demonstration program is to improve the health and well being of individuals through improved preventive health care and promotion of personal responsibility. The Office of Community Services seeks through discretionary grants to unify the approach to health promotion and disease prevention activities with families and communities. OCS encourages community efforts to improve the coordination and integration of health services for all low-income families, and to identify opportunities for integrating other program services for this population.

III. Demonstration Partnership Program

The Office of Community Services makes discretionary grants available to test and evaluate new approaches to providing greater self-sufficiency among low-income individuals and their families.

IV. Family Support Centers and Gateway Demonstration Program

The purpose of this demonstration program is to develop and operate Family Support Centers and Gateway projects that administer and provide comprehensive and intensive supportive services that enhance the physical, social educational development of low and very low-

income individuals in very low-income families who were previously homeless and currently residing in governmental subsidized housing or those at risk of becoming homeless.

V. Job Opportunities for Low-Income Individuals Program

The purpose of these discretionary grants is to conduct demonstration projects to create employment and business opportunities for certain low-income individuals.
Annual Number of Respondents: 920.
Annual Frequency: 1.
Average Burden Hours Per Response: *.
Total Burden Hours: 21,400.

*See supporting statement.

Dated: September 30, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93-25816 Filed 10-20-93; 8:45 am]

BILLING CODE 4184-01-M

Administration For Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), The Family and Youth Services Bureau (FYSB) of the Administration for Children and Families (ACF) is requesting clearance from the Office of Management and Budget (OMB) for instruments to be used to conduct a national evaluation of home-base services for runaway youth or potential runaway youth and their families. The National Evaluation of Home-Based Services Programs for Runaway Youth will provide information to assist FYSB in making policy and programmatic decisions regarding alternative service delivery options to the runaway youth population.

ADDRESSES: Copies of the information collection may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401-6964.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC. 20503. (202) 395-7316.

Information on Document

Title: National Evaluation of Home-Based Services Programs for Runaway Youth

OMB No.: New Request

Description: Three home-based services demonstration initiatives were funded in fiscal year 1991. The home-based services initiatives were designed to provide a continuum of in-home, family-based support services to runaway youth and their families. Currently, runaway youth, homeless youth, gang youth, and the families of these youth who seek assistance from FYSB are served primarily through shelter-based services systems. The Home-Based Services Programs target youth who were not involved in the child welfare or juvenile justice system but who had otherwise run away or were judged to be at-risk of running away. The Home-Based demonstration models focus on in-home parent-youth mediation and counseling services to resolve intra-family crisis while protecting the well-being of the youth.

The National Evaluation of Home-Based Services Programs for Runaway Youth is intended to determine, among other things, whether home-based services are an effective approach to serving the families of runaway youth and youth at risk for running away.

Annual Number of Respondents: 480
Frequency: 1.00
Average Burden Hours Per Response: 0.75

Total Burden Hours: 360

Dated: September 30, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93-25817 Filed 10-20-93; 8:45 am]

BILLING CODE 4184-01-M

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a national survey of Head Start grantees and delegate agencies. The survey entitled: "Survey of Head Start Family Self-Sufficiency Initiatives" is designed to obtain national data regarding self-sufficiency needs of Head Start families in the areas of literacy, employability, and substance abuse and to ascertain the extent that local Head Start programs independently or in collaboration with other community agencies assist Head Start families with their self-sufficiency needs.

ADDRESSES: Copies of this information collection may be obtained from Stephen R. Smith of the Office of Information Systems Management of the Administration for Children and Families (ACF) by calling (202) 401-6964. Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, D.C. 20503.

Information on Document

Title: Survey of Head Start Family Self-Sufficiency Initiatives

OMB No.: 0980—New request

Description: This survey is part of a national study to provide descriptive information on obstacles confronting self-sufficiency of Head Start families. Experts in the human services areas have generally recognized the changing demographics of Head Start families and that Head Start programs cannot take into consideration the full range of relevant social, psychological, educational, substance abuse, health and economic factors impacting Head Start families. Due to the sheer complexity of the problems and issues affecting Head Start families, it is clear that no single organization possesses the substantial resources necessary to develop and implement complete services without active program coordination and collaboration among community resources and agency services. Thus, this study is designed to identify the resources available for collaborative efforts that confront these problems.

In particular, the experts have recognized that problems in the areas of literacy, employability, and substance abuse were affecting a family's ability to become self-sufficient. The survey is designed to gather descriptive information on the number and type of efforts undertaken by Head Start programs, either directly or in collaboration with other agencies, to help families address the problem areas which jeopardize their self-sufficiency.

By conducting a national survey of all Head Start grantees, managers of Head Start Programs and ACF will gain a better understanding of current levels of involvement in community efforts to address the three major problem areas that threaten self-sufficiency, as well as the potential role that grantees could play in these efforts. This information will be used to provide recommendations on how to foster and support Head Start programs' attempts to address these problems, and will help

to ensure that the policies and practices of programs serving Head Start families support an effective, collaborative, and integrated approach to confronting the myriad of problems that threaten self-sufficiency.

Annual Number of Respondents: 1,900
Frequency: 1

Average Burden Hours Per Responses:
.833

Total Burden Hours: 1,583

Dated: October 7, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93-25819 Filed 10-20-93; 8:45 am]

BILLING CODE 4184-01-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the Antiviral Drugs Advisory Committee

Date, time, and place. November 22, 1993, 8 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in

writing, on issues pending before the committee. Those desiring to make formal presentations should notify a contact person before November 15, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will discuss data on safety and efficacy regarding new drug applications (NDA's) 50-708 and 50-709, tacrolimus (Prograf®), Fujisawa USA, Inc., for use in prophylaxis of rejection of primary liver allografts.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral

presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting. This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-25867 Filed 10-20-93; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

[Billing Code 4140-01]

National Institute of Environmental Health Sciences: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Identification of a Hormone Interacting With a Novel Hepatic Orphan Nuclear Receptor

AGENCY: National Institute of Environmental Health Sciences, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: National Institute of Environmental Health Sciences (NIEHS) seek a pharmaceutical company that can effectively pursue the isolation and

molecular structure determination of a hormone activating a novel orphan nuclear receptor belonging to the family of steroid and thyroid hormone receptors. The receptor's ligand-dependency has been clearly established and initial purification methods have been developed for separation of the hormone activity from other components in tissue extracts. The potential partner should have the facilities to extract kilogram quantities of biological material with organic solvents as well as possess the necessary expertise for characterizing the hormone's chemical structure using techniques such as nuclear magnetic resonance, infrared, ultraviolet, and mass spectroscopy. The prospective partner should also be proficient in both analytical and synthetic organic chemistry techniques for small molecule structure determination.

ADDRESSES: Questions about this opportunity may be addressed to Dr. Cary Weinberger, NIEHS, Mail Drop 3B-02, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541-1355.

DATES: Proposal must be received by November 29, 1993.

SUPPLEMENTARY INFORMATION: NIEHS is seeking a pharmaceutical company possessing the wherewithal to aid in the isolation of novel hormones interacting with receptors of the class that bind steroid and thyroid hormones, retinoids, and vitamin D. These receptor polypeptides bind lipophilic, small molecular weight ligands endowing the receptor with higher DNA binding affinities resulting in transcription modulation from a limited number of target genes. The scientific literature boasts a collection of fifteen orphan nuclear receptors whose activating ligands remain unidentified. One particular unpublished orphan receptor, expressed in the liver and intestine, has recently been shown to source of hormone activity of transcription. A suitable source of hormone activity has been identified and initial chromatographic techniques have been applied to separate this activity from the remainder of the complex mixture.

The role of the CRADA partner will be the following:

1. To aid in the extraction of sufficient quantities of the hormone activity from biological samples for its physico-chemical analysis. All necessary methods and reagents for following the activity through these purification steps will be transferred to the partner. The purity of the active fractions will be assessed at predetermined intervals.

2. To provide the analytical means and expertise for characterizing the physical and chemical characteristics of the active principle, specifically its molecular weight and structure. These should include but not be limited to knowledge of nuclear magnetic resonance spectroscopy, infrared spectroscopy, ultraviolet spectroscopy, and mass spectroscopy. In addition, the partner should possess the capacity for derivatization of the active principle using methods of organic synthesis. Experience with these analytical methods for structure determination should be grounded in the study of small lipophilic molecules such as steroids or terpenes.

3. Organic synthesis of the hormone as the final proof of its biological activity and for physiological and pharmacological testing in animals.

Selection criteria for choosing the CRADA partner(s) will include, but not be limited to the following:

1. Willingness to provide NIEHS with sufficient amounts of the purified hormone for subsequent physiological studies in animals and humans.

2. Experience and ability to produce, package, market, and distribute any pharmaceutical products in the United States arising from this cooperative venture for hormone structure determination.

3. Willingness to share the synthesized material for defined studies with outside laboratories.

4. Willingness to accept provisions for the equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free research license to the Government (when a company employee is the sole inventor); or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole or joint inventor).

Dated: October 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93-25879 Filed 10-20-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Notice of Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on November 15-16, 1993, at the National Institute of Environmental Health Sciences,

Building 18 Conference Room, North Campus, Research Triangle Park, North Carolina. The meeting will be open to the public on November 15 from 1 p.m. until approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public November 15, from approximately 8:30 a.m. until 12 Noon, from 2 p.m. to recess and from 8:30 a.m. to adjournment on November 16, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Allen Dearth and Carol Shreffler, Scientific Review Administrators, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919-541-7826), will provide summaries of meeting and rosters of committee members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact any of the above named Scientific Review Administrators in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 98.894, Resource and Manpower Development, National Institutes of Health)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research.

[FR Doc. 93-25869 Filed 10-20-93; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, October 18 and 19, 1993, at the Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on October 18 from 8:30 to 9 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 9 a.m. on October 18 until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, suite 350, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5301, will provide, upon request, summaries of the meeting, rosters of committee members, and substantive program information, as well as, information regarding sign language interpretation or other reasonable accommodations.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health.)

Dated: October 14, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 93-25868 Filed 10-20-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given of the revision and update of the list of entities recognized and eligible for funding and services from the Bureau of Indian Affairs and is published pursuant to 25 CFR part 83.

FOR FURTHER INFORMATION CONTACT: Patricia Simmons, Bureau of Indian Affairs, Division of Tribal Government Services, 1849 C Street NW.,

Washington, DC 20240. Telephone number: (202) 208-7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list for the contiguous 48 states is updated from the last such list published in 1988 to include tribes acknowledged through the Federal acknowledgment process and legislation. The list for Alaska has been substantially revised from the 1988 list of Alaska entities for the following reasons:

In 1978 the Department of the Interior adopted regulations setting out "Procedures for Establishing That an American Indian Group Exists as an Indian Tribe." 43 FR 39361 (Sept. 5, 1978). The regulations "establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected." 25 CFR 83.2.

Under the procedures, groups not recognized as tribes by the Federal Government may apply for Federal acknowledgment. Tribes, bands, pueblos or communities already acknowledged as such and receiving services from the Bureau of Indian Affairs were not required to seek acknowledgment anew. 25 CFR 83.3 (a), (b). To assist groups in determining whether they were required to apply, the procedures provided for the publication within 90 days of a list of "all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs." 25 CFR 83.6(b). This list is to be updated annually. *Ibid.*

The first list of acknowledged tribes was published in 1979. 44 FR 7325 (Feb. 9, 1979). The list used the term "entities" in the preamble and elsewhere to refer to and include all the various anthropological organizations, such as bands, pueblos and villages,

acknowledged by the Federal Government to constitute tribes with a government-to-government relationship with the United States. A footnote defined "entities" to include "Indian tribes, bands, villages, groups and pueblos as well as Eskimos and Aleuts." 44 FR at 7325, n. *

The 1979 list did not, however, contain the names of any Alaska Native entities. The preamble stated that: "[t]he list of eligible Alaskan entities will be published at a later date." 44 FR at 7235.

In 1982 the Department added to the list of tribal entities in the contiguous 48 states a "preliminary list" of Alaska Native entities under the heading Alaska Native Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs. 47 FR 53133 (Nov. 24, 1982). The preamble to this list stated:

[U]nique circumstances have made eligible additional entities in Alaska which are not historical tribes. Such circumstances have resulted in multiple, overlapping eligibility of Native entities in Alaska. To alleviate any confusion which might arise from publication of a multiple eligibility listing, the following preliminary list shows those entities to which the Bureau of Indian Affairs gives priority for purposes of funding and services.

47 FR at 53133-53134.

The meaning of this preamble was clarified by the 1982 list itself. The entities appearing on the list were traditional councils that were identified as tribes in the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602(c), and that had been dealt with by the Bureau of Indian Affairs on a government-to-government basis and Indian Reorganization Act councils organized under the Indian Reorganization Act (IRA), 25 U.S.C. 473a, and dealt with on a government-to-government basis by the BIA. These entities parallel the kinds of entities listed on the list for the contiguous 48 states. Not listed on the Alaska list were regional, village and urban corporations organized under state law in accordance with ANCSA. These corporations are not governments, but they have been designated as "tribes" for the purposes of some Federal laws, primarily the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450b(b), creating the overlapping eligibility referred to in the preamble.

The 1982 preamble, nonetheless, caused confusion as to the Department's intent. See, e.g., *Board of Equalization v. Alaska Native Brotherhood*, 666 P.2d 1015, 1024, n. 1 (Alaska 1983) (concurring opinion). A number of Alaska Native organizations complained

that the preamble was ambiguous and cast doubt on the tribal status of Alaska Native villages and regional tribes. The statement was dropped from the subsequent lists published in 1983, 48 FR 56862 (Dec. 23, 1983); 1985, 50 FR 6058 (Feb. 13, 1985); and 1986, 51 FR 25118 (July 10, 1986). However, this deletion did not eliminate lingering uncertainties over whether inclusion on, or exclusion from, the Alaska Native entities list constituted an official determination of the United States government as to the tribal status of Native entities. In addition, in 1986, a number of Alaska Native entities complained that they had been wrongly omitted from the lists published between 1982 and 1986.

In 1988, as part of the annual publication required by 25 CFR 83.6(b), the Department published a new list of Alaska entities. The 1988 list departed from the previous lists in a number of respects. Rather than being limited to traditional Native governments and governments reorganized under Federal law, as were the prior lists, the 1988 list was expanded to include nine categories of Alaska entities, including the state-chartered regional, village and urban corporations established pursuant to ANCSA. The number of listed entities thus more than doubled to 500. The preamble to the list stated that the revised list responded to a "demand by the Bureau and other Federal agencies * * * for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning Federal programs for Indians." 53 FR at 52,832.

The inclusion of non-tribal entities on the 1988 Alaska entities list departed from the intent of 25 CFR 83.6(b) and created a discontinuity from the list of tribal entities in the contiguous 48 states, which was republished as part of the same Federal Register notice. As in Alaska, Indian entities in the contiguous 48 states other than recognized tribes are frequently eligible to participate in Federal programs under specific statutes. For example, "tribal organizations" associated with recognized tribes, but not themselves tribes, are eligible for contracts and grants under the ISDA. 25 U.S.C. 450b(c), 450f, 450g. Unlike the Alaska entities list, the 1988 entities list for the contiguous 48 states was not expanded to include such entities.

Even more significantly, the change to the Alaska entities list compounded, rather than resolved, the question of the status of Alaska tribes raised by prior lists. First, the list did not distinguish between entities listed on the basis of

their status as tribes and non-tribal entities listed because of their eligibility to participate in Federal programs under specific statutes. Second, it omitted the language on some of the earlier lists which described the listed Indian groups as "Indian tribal entities which are recognized as having a special relationship with the United States" and instead included language applicable only to Alaska stating that:

Inclusion on a list of entities already receiving and eligible for Bureau funding does not constitute a determination that the entity either would or would not qualify for Federal Acknowledgment under the regulations, but only that no such effort is necessary to preserve eligibility. Furthermore, inclusion on or exclusion from this list of any entity should not be construed to be a determination by this Department as to the extent of the powers and authority of that entity.

53 FR at 52,832. Finally, the 1988 list further confused the status of a number of specific entities by using names for some villages that were different from the names of these villages used by the Native traditional councils.

These changes in the 1988 publication have raised a number of questions with respect to the Department's intent and the effect of the 1988 list. The omission in the preamble of all references acknowledging the tribal status of the listed villages, and the inclusion of ANCSA corporations, which lack tribal status in a political sense, called into question the status of all the listed entities. Numerous Native villages, regional tribes and other Native organizations objected to the 1988 list on the grounds that it failed to distinguish between Native corporations and Native tribes and failed to unequivocally recognize the tribal status of the listed villages and regional tribes.

In January 1993 the Solicitor of the Department of the Interior issued a comprehensive opinion analyzing the status of Alaska Native villages as "Indian tribes," as that term is commonly used to refer to Indian entities in the contiguous 48 states. The Solicitor analyzed the unique circumstances of Alaska Native villages. After a lengthy historical review, the Solicitor concluded that there are tribes in Alaska:

By the time of enactment of the IRA [Indian Reorganization Act of 1934, as amended in 1936], the preponderant opinion was that Alaska Natives were subject to the same legal principles as Indians in the contiguous 48 states, and had the same powers and attributes as other Indian tribes, except to the extent limited or preempted by Congress.

What constitutes a tribe in the contiguous 48 states is sometimes a difficult question. So

also is it in Alaska. The history of Alaska is unique, but so is that of California, New Mexico and Oklahoma. While the Department's position with regard to the existence of tribes in Alaska may have vacillated between 1867 and the opening decades of this century, it is clear that for the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930's did not preclude it from dealing with them as tribes subsequently.

Sol. Op. M-36,975, at 46, 47-48 (Jan. 11, 1993).

The Solicitor found it unnecessary for the purposes of his opinion to identify specifically those villages which are tribes, although he observed that Congress's listing of specific villages in the Alaska Native Claims Settlement Act and the repeated inclusion of such villages within the definition of "tribe" over the 20 years since the passage of ANCSA arguably constituted a congressional determination that the villages found eligible for benefits under ANCSA, referred to as the "modified ANCSA list," are considered Indian tribes for purposes of Federal law. M-36,975, at 58-59.

In view of the foregoing, and to comply with the requirement of 25 CFR 83.6(b), the Department of the Interior has determined it necessary to publish a new list of Alaska tribal entities. The Bureau of Indian Affairs has reviewed the "modified ANCSA list" of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments and found that the villages and regional tribes listed below have functioned as political entities exercising governmental authority and are, therefore, acknowledged to have "the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes."

The purpose of the current publication is to publish an Alaska list of entities conforming to the intent of 25 CFR 83.6(b) and to eliminate any doubt as to the Department's intention by expressly and unequivocally acknowledging that the Department has determined that the villages and regional tribes listed below are distinctly Native communities and have the same status as tribes in the contiguous 48 states. Such acknowledgement of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to

Indian tribes. This list is published to clarify that the villages and regional tribes listed below are not simply eligible for services, or recognized as tribes for certain narrow purposes. Rather, they have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection; immunities, privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes.¹

A directive accompanying the Department of the Interior and Related Agencies Appropriations Act for FY 1992 directed the Secretary to study the historical evidence relating to five villages for purposes of determining whether they were inadvertently denied village or urban status under ANCSA. H.R. Rep. No. 102-256, 102d Cong., 1st Sess. 42-43 (1991). Four of these villages are listed below on the basis of their reorganization under Federal law. A decision on inclusion of the remaining village (Tenakee) will be made after the completion of the study.

Because the list published by this notice is limited to entities found to be Indian tribes, as that term is defined and used in 25 CFR part 83, it does not include a number of non-tribal Native entities in Alaska that currently contract with or receive services from the Bureau of Indian Affairs pursuant to specific statutory authority, including ANCSA village and regional corporations and various tribal organizations. These entities are made eligible for Federal contracting and services by statute and their non-inclusion on the list below does not affect the continued eligibility of the entities for contracts and services.²

¹ Sol. Op. M-36,975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers." M-36,975, at 109. That portion of the opinion is subject to review, but has not been withdrawn or modified.

² Under longstanding BIA policy, priority for contracts and services in Alaska is given to reorganized and traditional governments over non-tribal corporations. Proposed regulations to implement the 1988 Amendments to the Indian Self-Determination Act scheduled to be published in the near future will incorporate this policy.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible to Receive Services from The United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
 Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
 Alabama and Coushatta Tribes of Texas
 Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
 Alturas Rancheria of Pit River Indians of California
 Apache Tribe of Oklahoma
 Arapahoe Tribe of the Wind River Reservation, Wyoming
 Aroostook Band of Micmac Indians of Maine
 Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
 Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
 Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
 Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
 Berry Creek Rancheria of Maidu Indians of California
 Big Lagoon Rancheria of Smith River Indians of California
 Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
 Big Sandy Rancheria of Mono Indians of California
 Big Valley Rancheria of Pomo & Pit-River Indians of California
 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
 Blue Lake Rancheria of California
 Bridgeport Paiute Indian Colony of California
 Buena Vista Rancheria of Me-Wuk Indians of California
 Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
 Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
 Caddo Indian Tribe of Oklahoma
 Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
 Cahto Indian Tribe of the Laytonville Rancheria, California
 Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
 Capitan Grande Band of Diegueno Mission Indians of California:
 Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
 Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
 Cayuga Nation of New York
 Cedarville Rancheria of Northern Paiute Indians of California

Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
 Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
 Cherokee Nation of Oklahoma
 Cheyenne-Arapaho Tribes of Oklahoma
 Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
 Chickasaw Nation of Oklahoma
 Chicken Ranch Rancheria of Me-Wuk Indians of California
 Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
 Chitimacha Tribe of Louisiana
 Choctaw Nation of Oklahoma
 Citizen Band Potawatomi Indian Tribe of Oklahoma
 Cloverdale Rancheria of Pomo Indians of California
 Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
 Cocopah Tribe of Arizona
 Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
 Cold Springs Rancheria of Mono Indians of California
 Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
 Comanche Indian Tribe of Oklahoma
 Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
 Confederated Tribes of the Chehalis Reservation, Washington
 Confederated Tribes of the Colville Reservation, Washington
 Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
 Confederated Tribes of the Goshute Reservation, Nevada and Utah
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of the Siletz Reservation, Oregon
 Confederated Tribes of the Umatilla Reservation, Oregon
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation, Washington
 Coquille Tribe of Oregon
 Cortina Indian Rancheria of Wintun Indians of California
 Coushatta Tribe of Louisiana
 Covelo Indian Community of the Round Valley Reservation, California
 Cow Creek Band of Umpqua Indians of Oregon
 Coyote Valley Band of Pomo Indians of California
 Creek Nation of Oklahoma
 Crow Tribe of Montana
 Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
 Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
 Death Valley Timbi-Sha Shoshone Band of California
 Delaware Tribe of Western Oklahoma
 Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
 Dry Creek Rancheria of Pomo Indians of California
 Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada

- Eastern Band of Cherokee Indians of North Carolina
- Eastern Shawnee Tribe of Oklahoma
- Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
- Elk Valley Rancheria of Smith River Tolowa Indians of California
- Ely Shoshone Tribe of Nevada
- Enterprise Rancheria of Maidu Indians of California
- Flandreau Santee Sioux Tribe of South Dakota
- Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
- Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
- Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
- Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
- Fort Mojave Indian Tribe of Arizona
- Fort Sill Apache Tribe of Oklahoma
- Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
- Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
- Greenville Rancheria of Maidu Indians of California
- Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
- Guidville Rancheria of California
- Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
- Havasupai Tribe of the Havasupai Reservation, Arizona
- Hoh Indian Tribe of the Hoh Indian Reservation, Washington
- Hoopa Valley Tribe of the Hoopa Valley Reservation, California
- Hopi Tribe of Arizona
- Hopland Band of Pomo Indians of the Hopland Rancheria, California
- Houlton Band of Maliseet Indians of Maine
- Hualapai Tribe of the Hualapai Indian Reservation, Arizona
- Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
- Iowa Tribe of Kansas and Nebraska
- Iowa Tribe of Oklahoma
- Jackson Rancheria of Me-Wuk Indians of California
- Jamestown Klallam Tribe of Washington
- Jamul Indian Village of California
- Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
- Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
- Kalispel Indian Community of the Kalispel Reservation, Washington
- Karuk Tribe of California
- Kashia Band of Pomo Indians of the Stewart Point Rancheria, California
- Kaw Indian Tribe of Oklahoma
- Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
- Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
- Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
- Kickapoo Tribe of Oklahoma
- Kickapoo Traditional Tribe of Texas
- Kiowa Indian Tribe of Oklahoma
- Klamath Indian Tribe of Oregon
- Kootenai Tribe of Idaho
- La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
- La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
- La Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
- Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
- Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
- Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
- Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
- Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
- Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
- Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
- Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
- Lummi Tribe of the Lummi Reservation, Washington
- Lytton Rancheria of California
- Makah Indian Tribe of the Makah Indian Reservation, Washington
- Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
- Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
- Mashantucket Pequot Tribe of Connecticut
- Mechoopda Indian Tribe of Chico Rancheria, California
- Menominee Indian Tribe of Wisconsin
- Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
- Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
- Miami Tribe of Oklahoma
- Miccosukee Tribe of Indians of Florida
- Middletown Rancheria of Pomo Indians of California
- Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lac Band; White Earth Band)
- Mississippi Band of Choctaw Indians, Mississippi
- Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
- Modoc Tribe of Oklahoma
- Mooretown Rancheria of Maidu Indians of California
- Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
- Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
- Narragansett Indian Tribe of Rhode Island
- Navajo Tribe of Arizona, New Mexico & Utah
- Nez Perce Tribe of Idaho
- Nisqually Indian Community of the Nisqually Reservation, Washington
- Nooksack Indian Tribe of Washington
- Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
- Northfork Rancheria of Mono Indians of California
- Northwestern Band of Shoshoni Indians of Utah (Washakie)
- Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
- Omaha Tribe of Nebraska
- Oneida Nation of New York
- Oneida Tribe of Wisconsin
- Onondaga Nation of New York
- Osage Tribe of Oklahoma
- Ottawa Tribe of Oklahoma
- Otoe-Missouria Tribe of Oklahoma
- Paiute Indian Tribe of Utah
- Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
- Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
- Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
- Pala Band of Luiseno Mission Indians of the Pala Reservation, California
- Pascua Yaqui Tribe of Arizona
- Passamaquoddy Tribe of Maine
- Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
- Pawnee Indian Tribe of Oklahoma
- Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
- Penobscot Tribe of Maine
- Peoria Tribe of Oklahoma
- Picayune Rancheria of Chukchansi Indians of California
- Pinoleville Rancheria of Pomo Indians of California
- Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancheries & XL Ranch)
- Poarch Band of Creek Indians of Alabama
- Ponca Tribe of Indians of Oklahoma
- Ponca Tribe of Nebraska
- Port Gamble Indian Community of the Port Gamble Reservation, Washington
- Potter Valley Rancheria of Pomo Indians of California
- Prairie Band of Potawatomi Indians of Kansas
- Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
- Pueblo of Acoma, New Mexico
- Pueblo of Cochiti, New Mexico
- Pueblo of Jemez, New Mexico
- Pueblo of Isleta, New Mexico
- Pueblo of Laguna, New Mexico
- Pueblo of Nambe, New Mexico
- Pueblo of Picuris, New Mexico
- Pueblo of Pojoaque, New Mexico
- Pueblo of San Felipe, New Mexico
- Pueblo of San Juan, New Mexico
- Pueblo of San Ildefonso, New Mexico
- Pueblo of Sandia, New Mexico
- Pueblo of Santa Ana, New Mexico
- Pueblo of Santa Clara, New Mexico
- Pueblo of Santo Domingo, New Mexico
- Pueblo of Taos, New Mexico
- Pueblo of Tesuque, New Mexico
- Pueblo of Zia, New Mexico

- Puyallup Tribe of the Puyallup Reservation, Washington
- Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Washington
- Quapaw Tribe of Oklahoma
- Quartz Valley Rancheria of Karok, Shasta & Upper Klamath Indians of California
- Quechan Tribe of the Fort Yuma Indian Reservation, California
- Quileute Tribe of the Quileute Reservation, Washington
- Quinault Tribe of the Quinault Reservation, Washington
- Ramona Band or Village of Cahuilla Mission Indians of California
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
- Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
- Redding Rancheria of Pomo Indians of California
- Redwood Valley Rancheria of Pomo Indians of California
- Reno-Sparks Indian Colony, Nevada
- Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
- Robinson Rancheria of Pomo Indians of California
- Rohnerville Rancheria of Bear River or Mattole Indians of California
- Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
- Rumsey Indian Rancheria of Wintun Indians of California
- Sac & Fox Tribe of Mississippi in Iowa
- Sac & Fox Tribe of Missouri in Kansas and Nebraska
- Sac & Fox Tribe of Oklahoma
- Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
- Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
- San Carlos Apache Tribe of the San Carlos Reservation, Arizona
- San Juan Southern Paiute Tribe of Arizona
- San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
- San Pasqual Band of Diegueno Mission Indians of California
- Santa Rosa Indian Community of the Santa Rosa Rancheria, California
- Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
- Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
- Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
- Santee Sioux Tribe of the Santee Reservation of Nebraska
- Sauk-Suiattle Indian Tribe of Washington
- Sault Ste. Marie Tribe of Chippewa Indians of Michigan
- Scotts Valley Band of Pomo Indians of California
- Seminole Nation of Oklahoma
- Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
- Seneca Nation of New York
- Seneca-Cayuga Tribe of Oklahoma
- Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
- Sheep Ranch Rancheria of Me-Wuk Indians of California
- Sherwood Valley Rancheria of Pomo Indians of California
- Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
- Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
- Shoshone Tribe of the Wind River Reservation, Wyoming
- Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
- Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
- Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
- Skokomish Indian Tribe of the Skokomish Reservation, Washington
- Skull Valley Band of Goshute Indians of Utah
- Smith River Rancheria of California
- Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
- Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
- Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
- Spokane Tribe of the Spokane Reservation, Washington
- Squaxin Island Tribe of the Squaxin Island Reservation, Washington
- St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
- St. Regis Band of Mohawk Indians of New York
- Standing Rock Sioux Tribe of North & South Dakota
- Stockbridge-Munsee Community of Mohican Indians of Wisconsin
- Stillaguamish Tribe of Washington
- Summit Lake Paiute Tribe of Nevada
- Suquamish Indian Tribe of the Port Madison Reservation, Washington
- Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
- Swinomish Indians of the Swinomish Reservation, Washington
- Sycuan Band of Diegueno Mission Indians of California
- Table Bluff Rancheria of Wiyot Indians of California
- Table Mountain Rancheria of California
- Te-Moak Tribes of Western Shoshone Indians of Nevada
- Thlopthlocco Tribal Town of the Creek Nation of Oklahoma
- Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
- Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
- Tonawanda Band of Seneca Indians of New York
- Tonkawa Tribe of Indians of Oklahoma
- Tonto Apache Tribe of Arizona
- Torres-Martinez Band of Cahuilla Mission Indians of California
- Tule River Indian Tribe of the Tule River Reservation, California
- Tulalip Tribes of the Tulalip Reservation, Washington
- Tunica-Biloxi Indian Tribe of Louisiana
- Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
- Turtle Mountain Band of Chippewa Indians of North Dakota
- Tuscarora Nation of New York
- Twenty-Nine Palms Band of Luiseno Mission Indians of California
- United Keetoowah Band of Cherokee Indians of Oklahoma
- Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
- Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
- Upper Skagit Indian Tribe of Washington
- Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
- Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
- Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
- Walker River Paiute Tribe of the Walker River Reservation, California
- Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
- Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
- White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
- Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie) of Oklahoma
- Winnebago Tribe of Nebraska
- Winnemucca Indian Colony of Nevada
- Wisconsin Winnebago Indian Tribe of Wisconsin
- Wyandotte Tribe of Oklahoma
- Yankton Sioux Tribe of South Dakota
- Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
- Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
- Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
- Yomba Shoshone Tribe of the Yomba Reservation, Nevada
- Ysleta Del Sur Pueblo of Texas
- Yurok Tribe of the Hoopa Valley Reservation, California
- Zuni Tribe of the Zuni Reservation, New Mexico
- Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**
- Village of Afognak
- Native Village of Akhiok
- Akiachak Native Community
- Akiak Native Community
- Native Village of Akutan
- Village of Alakanuk
- Alatna Village
- Native Village of Aleknagik
- Algaaciq Native Village (St. Mary's)
- Allakaket Village
- Native Village of Ambler
- Village of Anaktuvuk Pass
- Yupit of Andreafski
- Angoon Community Association
- Village of Aniak
- Anvik Village
- Arctic Village (See Native Village of Venetie Tribal Government)
- Native Village of Atka
- Atkasuk Village (Atkasook)
- Village of Atmautluak
- Native Village of Barrow
- Beaver Village
- Native Village of Belkofski
- Village of Bill Moore's Slough
- Birch Creek Village
- Native Village of Brevig Mission

- Native Village of Buckland
 Native Village of Cantwell
 Native Village of Chanega (aka Chenega)
 Chalkyitsik Village
 Village of Chefornak
 Chevak Native Village
 Chickaloon Native Village
 Native Village of Chignik
 Native Village of Chignik Lagoon
 Chignik Lake Village
 Chilkat Indian Village (Kluckwan)
 Chilkoot Indian Association (Haines)
 Chirik Eskimo Community (Golovin)
 Native Village of Chistochina
 Native Village of Chitina
 Native Village of Chuatbaluk (Russian Mission, Kuskokwim)
 Chuloonawick Native Village
 Circle Native Community
 Village of Clarks's Point
 Native Village of Council
 Craig Community Association
 Village of Crooked Creek
 Native Village of Deering
 Native Village of Dillingham
 Native Village of Diomedea (aka Inalik)
 Village of Dot Lake
 Douglas Indian Association
 Native Village of Eagle
 Native Village of Eek
 Egegik Village
 Eklutna Native Village
 Native Village of Ekuk
 Ekwook Village
 Native Village of Elim
 Emmonak Village
 Evansville Village (aka Bettles Field)
 Native Village of Eyak (Cordova)
 Native Village of False Pass
 Native Village of Fort Yukon
 Native Village of Gakona
 Galena Village (aka Loudon Village)
 Native Village of Gambell
 Native Village of Georgetown
 Native Village of Goodnews Bay
 Organized Village of Grayling (aka Holikachuk)
 Gulkana Village
 Native Village of Hamilton
 Healy Lake Village
 Holy Cross Village
 Hoonah Indian Association
 Native Village of Hooper Bay
 Hughes Village
 Huslia Village
 Hydaburg Cooperative Association
 Igiugig Village
 Village of Iliamna
 Inupiat Community of the Arctic Slope
 Ivanoff Bay Village
 Kaguyak Village
 Organized Village of Kake
 Kaktovik Village (aka Barter Island)
 Village of Kalskag
 Village of Kaltag
 Native Village of Kanatak
 Native Village of Karluk
 Organized Village of Kasaan
 Native Village of Kasigluk
 Kenaitze Indian Tribe
 Ketchikan Indian Corporation
 Native Village of Kiana
 Agdaagux Tribe of King Cove
 King Island Native Community
 Native Village of Kipnuk
 Native Village of Kivalina
 Klawock Cooperative Association
 Native Village of Kluti Kaah (aka Copper Center)
 Knik Village
 Native Village of Kobuk
 Kokhanok Village
 Koliganek Village
 Native Village of Kongiganak
 Village of Kotlik
 Native Village of Kotzebue
 Native Village of Koyuk
 Koyukuk Native Village
 Organized Village of Kwethluk
 Native Village of Kwigillingok
 Native Village of Kwinhagak (aka Quinhagak)
 Native Village of Larsen Bay
 Levelock Village
 Lesnoi Village (aka Woody Island)
 Lime Village
 Village of Lower Kalskag
 Manley Hot Springs Village
 Manokotak Village
 Native Village of Marshall (aka Fortuna Ledge)
 Native Village of Mary's Igloo
 McGrath Native Village
 Native Village of Mekoryuk
 Mentasta Lake Village
 Metlakatla Indian Community, Annette Island Reserve
 Native Village of Minto
 Native Village of Mountain Village
 Naknek Native Village
 Native Village of Nanwalek (aka English Bay)
 Native Village of Napaimute
 Native Village of Napakiak
 Native Village of Napaskiak
 Native Village of Nelson Lagoon
 Nenana Native Association
 New Stuyahok Village
 Newhalen Village
 Newtok Village
 Native Village of Nightmute
 Nikolai Village
 Native Village of Nikolski
 Ninilchik Village
 Native Village of Noatak
 Nome Eskimo Community
 Nondalton Village
 Noorvik Native Community
 Northway Village
 Native Village of Nuiqsut (aka Nooiksut)
 Nulato Village
 Native Village of Nunapitchuk
 Village of Ohogamiut
 Village of Old Harbor
 Orutsararmuit Native Village (aka Bethel)
 Oscarville Traditional Village
 Native Village of Ouzinkie
 Native Village of Paimiut
 Pauloff Harbor Village
 Pedro Bay Village
 Native Village of Perryville
 Petersburg Indian Association
 Native Village of Pilot Point
 Pilot Station Traditional Village
 Native Village of Pitka's Point
 Platinum Traditional Village
 Native Village of Point Hope
 Native Village of Point Lay
 Native Village of Port Graham
 Native Village of Port Heiden
 Native Village of Port Lions
 Portage Creek Village (aka Ohgsenakale)
 Pribilof Islands Aleut Communities of St. Paul & St. George Islands
 Qagan Toyagungin Tribe of Sand Point Village
 Rampart Village
 Village of Red Devil
 Native Village of Ruby
 Native Village of Russian Mission (Yukon)
 Village of Salamattoff
 Organized Village of Saxman
 Native Village of Savoonga
 Saint George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Native Village of Saint Michael
 Saint Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
 Native Village of Scammon Bay
 Native Village of Selawik
 Seldovia Village Tribe
 Shageluk Native Village
 Native Village of Shaktolik
 Native Village of Sheldon's Point
 Native Village of Shishmaref
 Native Village of Shungnak
 Sitka Tribe of Alaska
 Skagway Village
 Village of Sleetmute
 Village of Solomon
 South Naknek Village
 Stebbins Community Association
 Native Village of Stevens
 Village of Stony River
 Takotna Village
 Native Village of Tanacross
 Native Village of Tanana
 Native Village of Tatitlek
 Native Village of Tazlina
 Telida Village
 Native Village of Teller
 Native Village of Tetlin
 Traditional Village of Togiak
 Native Village of Toksook Bay
 Tuluksak Native Community
 Native Village of Tuntutuliak
 Native Village of Tununak
 Twin Hills Village
 Native Village of Tyonek
 Ugashik Village
 Umkumiute Native Village
 Native Village of Unalakleet
 Qawalingin Tribe of Unalaska
 Native Village of Unga
 Village of Venetie (See Native Village of Venetie Tribal Government)
 Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
 Village of Wainwright
 Native Village of Wales
 Native Village of White Mountain
 Wrangell Cooperative Association
 Yakutat Tlingit Tribe

[FR Doc. 93-25822 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-02-P

Bureau of Land Management

[NMO10-4332-01/G910G0001]

Environmental Impact Statement (EIS); Chain of Craters Wilderness Study Unit (WSU), NM**AGENCY:** Bureau of Land Management (BLM).

ACTION: Notice of Intent to Prepare an EIS on the wilderness suitability of the Chain of Craters WSU in west-central New Mexico and notice of a thirty-(30-) day public scoping period.

SUMMARY: Pursuant to the El Malpais Legislation (Public Law 100-225, signed on December 31, 1987) and Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM Albuquerque District will prepare an EIS to address the anticipated impacts of designating or not designating the Chain of Craters WSU for preservation as wilderness. The recommendation will be made through the Secretary of the Interior to the President, followed by congressional action. Only Congress can either designate the area as wilderness or release it from the wilderness review process. Pending congressional action, the Chain of Craters WSU is being managed under the BLM's *Interim Management Policy and Guidelines for Lands Under Wilderness Review*.

DATES: Written comments regarding the scope of this proposal will be accepted until November 24, 1993, or until 30 days after the date of this notice in the *Federal Register*, whichever is later. Public meetings have not been planned but individuals or groups with interest in this proposal are invited to call or come into the Albuquerque District Office and meet with members of the interdisciplinary team. The Draft EIS is tentatively scheduled to be released to the public for a 90-day comment period by the end of March 1994.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, 435 Montano NE, Albuquerque, NM 87107, Attn. Team Leader, Chain of Craters EIS.

FOR FURTHER INFORMATION CONTACT: John Bristol (505) 761-8755.

SUPPLEMENTARY INFORMATION: The El Malpais National Conservation Area (NCA) near Grants, New Mexico, was established on December 31, 1987, with the enactment of Public Law 100-225. The NCA, managed by the BLM's Albuquerque District, encompasses 262,600 acres of public land. The Chain of Craters WSU, established through the same legislation and totalling 18,300 acres, is included within the boundaries of the NCA. An Environmental Assessment (EA) evaluating the impacts of designating or not designating the Chain of Craters WSU for wilderness designation was completed by the Albuquerque District in July 1991. The decision has now been made to proceed directly from that EA to an EIS. This decision is based upon the addition of wilderness studies to the list of actions

the Department of the Interior considers major actions normally requiring the preparation of an EIS. The analysis contained in the July 1991 EA, which included extensive public participation, is being used to identify the proposed issues and alternatives identified to be evaluated in the EIS. Public comments on the issues and alternatives identified to date, as well as any new issues or alternatives that arise through this early and open scoping process, will be considered by the BLM in preparing the EIS.

The proposed issues to be addressed in the EIS include wilderness values, livestock grazing management, American Indian uses, and dispersed recreational opportunities. Cultural resources has been raised as an issue but no sites were found, and only a few isolated artifacts were discovered during a 10 percent sampling of 8 sections. With the passage of Public Law 100-225, all federal minerals were withdrawn from entry and all outstanding mineral rights were acquired by the BLM in 1990. No state or federally listed threatened or endangered species exist within the WSU. (Note: The U.S. Fish and Wildlife Service concurs with this finding.)

The proposed alternatives to be addressed in the EIS include All Wilderness and No Wilderness. Under the All Wilderness Alternative, all 18,300 acres within the Chain of Craters would be considered for wilderness designation by the Congress. Under the No Wilderness Alternative, the Chain of Craters would be managed in accordance with the NCA prescriptions set forth in Public Law 100-225 and further described in the El Malpais General Management Plan (GMP, 1990-91). Copies of the El Malpais GMP may be reviewed in the Albuquerque District Office. An alternative to designate the Chain of Craters as an Area of Critical Environmental Concern (ACEC) has been raised but is now believed by the BLM to be unnecessary. The Chain of Craters is fully within the boundaries of the NCA and the management prescriptions contained in Public Law 100-225 are considered by the BLM to more than adequately meet the proposed objectives of an ACEC designation.

The El Malpais NCA was established to protect the area's unique and nationally significant resources for the benefit and enjoyment of present and future generations. These resources include recreational opportunities and the geological, archeological, ecological, cultural, scenic, and scientific features that surround the lava flows near Grants, New Mexico. The legislative

emphasis for the NCA is on conservation.

Dated: October 13, 1993.

Michael R. Ford,
District Manager.

[FR Doc. 93-25857 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-04-4210-04; IDI-28747]

Notice of Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public and State Lands.

SUMMARY: The United States has issued an exchange conveyance document to the State of Idaho under Section 206 of the Federal Land Policy and Management Act.

EFFECTIVE DATE: October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

- T. 9 N., R. 2 E.,
Sec. 11, NW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 9 N., R. 3 E.,
Sec. 11, S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 14, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 10 N., R. 3 E.,
Sec. 23, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 26, W $\frac{1}{2}$;
Sec. 27, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
- Sec. 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 16 N., R. 4 E.,
Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$;
Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 17 N., R. 4 E.,
Sec. 21, E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 22, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 34, S $\frac{1}{2}$.
- T. 18 N., R. 4 E.,
Sec. 6, lot 1;
Sec. 9, S $\frac{1}{2}$.
- T. 17 N., R. 2 W.,
Sec. 5, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 8, lots 2 to 4, inclusive, SW $\frac{1}{4}$ NW $\frac{1}{4}$,
and W $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 21, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 16 N., R. 4 W.,
Sec. 17, N $\frac{1}{2}$ NE $\frac{1}{4}$.

Comprising 2, 542.81 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 49 N., R. 4 W.,

Sec. 16, SW $\frac{1}{4}$ NE $\frac{1}{4}$ south of high water mark, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 48 N., R. 5 W.,

Sec. 36, lots 3 and 4, E $\frac{1}{2}$ NE $\frac{1}{4}$.

Comprising 492.34 acres of State land.

The purpose of the exchange was to acquire non-Federal lands which have high public-values for recreation. The public interest was well served through completion of the exchange. The values of the Federal and State lands in the exchange were each appraised at \$2,800,000

Dated: October 12, 1993.

William E. Ireland,*Realty Operations Sections.*

[FR Doc. 93-25858 Filed 10-29-93; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-4210-04; N-57917]

Notice of Realty Action; Exchange of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action N-57917 for exchange of lands in Clark County, Nevada.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, including the mineral estate, are being considered for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,

Sec. 11, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$.

T. 21 S., R. 59 E.,

Sec. 15, lots 10, 11, 16, and 17.

Sec. 22, lots 1, 2, 7, and 8.

Aggregating 582.72 acres more or less.

Final determination on disposal will await completion of an environmental analysis. In accordance with the regulations under title 43 CFR 2201.1(b), subject to valid and existing rights, publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, from all forms of appropriation under the public land laws, including the general mining laws, but not the mineral leasing laws and from any subsequent exchange proposals filed by any other proponent other than Summerlin Corporation or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of

termination of the segregation, or the expiration of two years from the date of publication, whichever comes first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: October 7, 1993.

Gary Ryan,*Acting District Manager.*

[FR Doc. 93-25901 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-HC-M

[WY-040-04-4210-03; WYW-105817]

Lease for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Recreation and Public Purposes Classification and Application for Lease in Lincoln County.

SUMMARY: The following public lands have been identified and examined and are classified as suitable for lease or purchase under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq.

Sixth Principal Meridian, Lincoln County, Wyoming

T.33N., R.118 W.,

Section 11, E $\frac{1}{2}$ NW $\frac{1}{4}$.

The above land aggregates 80 acres.

FOR FURTHER INFORMATION CONTACT:

Mark R. Hatchel, Realty Specialist, Kemmerer Resource Area, Rock Springs District, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307), 877-3933.

SUPPLEMENTARY INFORMATION: The purpose of this lease application is for the Teton Peaks Council of the Boy Scouts of America to construct and operate a short-term camping area. The Dry Canyon grazing allotment is composed entirely of this 80 acre parcel. The grazing permit will be terminated when the lease is issued. The proposed lease is consistent with the Kemmerer Resource Management Plan, and all other existing rights upon the land.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

The lands will not be offered for lease until at least December 20, 1993.

For a 45 day period ending on December 6, 1993, interested parties may submit comments to the Bureau of Land Management, District Manager, P.O. Box 1869, Rock Springs, Wyoming 82902-1869. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: October 8, 1993.

Darrel J. Short,*Area Manager.*

[FR Doc. 93-25818 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service**Receipt of Applications for Permit**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-782693

Applicant: St. Louis Zoo, St. Louis, MO

Applicant requests a permit to import blood, fecal, and hair samples of black-and-white ruffed lemur (*Lemur variegatus, variegatus*) for genetic testing. Animals from captive and wild populations in Betampona, Madagascar will be tranquilized for collecting the samples.

PRT-782692

Applicant: St. Louis Zoo, St. Louis, MO

Applicant requests a permit to import blood, fecal, and hair samples of red-ruffed lemur (*Lemur variegatus ruber*), white-fronted brown lemur (*Eulemur fulvus albifrons*), and gentle bamboo lemur (*Haplemur griseus*) for genetic testing. Animals from the wild populations in Masoala Peninsular, Madagascar will be placed under mild sedation while samples are collected.

PRT-783339

Applicant: St. Louis Zoo, St. Louis, MO

Applicant requests a permit to import blood, fecal, and hair samples of red-ruffed lemur (*Lemur variegatus ruber*), black-and-white ruffed lemur (*Lemur variegatus, variegatus*), the Crowned sifaka (*Propithecus verreauxi verreauxi*), and Coquerel's sifaka (*Propithecus verreauxi coquereli*) for genetic testing. Animals from wild populations from the Betsiboka River Basin and the Maroantsetra area of Madagascar will be placed under mild sedation while samples are collected.

PRT-783343

Applicant: San Diego Zoo, San Diego, CA

Applicant requests a permit to import two male and two female captive-bred Cabot's tragopans (*Tragopan caboti*) from the Tianhu Park, People's Republic of China, for enhancement of propagation.

PRT-769110

Applicant: David Konkol, Neemah, WI

Applicant requests a permit to purchase in interstate commerce three male and two female captive-bred Darwin's Rheas (*Pterocnemia pennata*) from Mel Royal, Fort Wayne, IN, for enhancement of propagation.

PRT-783625

Applicant: William W. Dodgson, V, Ogden, UT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. L. Kock, "Verborgenfontein", Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: October 15, 1993.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-25849 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

General Management Plan Amendment Presidio of San Francisco, Golden Gate National Recreation Area; Notice of Availability of Draft General Management Plan Amendment and Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy

Act of 1969 (P.L. 91-190, as amended), the National Park Service, Department of the Interior, has prepared a Draft General Management Plan Amendment/Environmental Impact Statement (GMPA/EIS) that describes and analyzes a proposed action and three alternatives for future management and use of the Presidio of San Francisco, Golden Gate National Recreation Area, California. The draft GMPA/EIS is being presented in two companion documents—the Draft General Management Plan Amendment, which describes the proposed action in detail; and the Draft Environmental Impact Statement, which presents the proposal and three alternatives along with the analysis of environmental consequences of their respective implementations.

The proposed action and alternatives all have been designed to protect and preserve exceptional resources and to meet planning objectives and goals for the future Presidio. They differ primarily in approach to overall management, level and extent of resource preservation and enhancement, and diversity and level of visitor programs. The proposed action, Alternative A, provides goals for creating a park setting where cultural and natural resources are preserved and enhanced, and major new programs are established through public/private partnerships to provide an understanding of those resources, encourage stewardship and cultural awareness, promote international exchange and seek solutions to critical global problems. A federally chartered partnership institution would be created through congressional legislation to assist in managing park partners and legislation also would be required to include the former Public Health Service hospital complex within the Presidio.

Alternative B, the no action/minimum requirements option, uses existing authorities for management, provides fewer visitor programs and opportunities, and excludes the former Public Health Service Hospital. Alternative C, the expanded open space, restoration and interpretation option, provides a similar high level of overall resource protection as Alternative A, but relies on existing management authorities as in Alternative B. Also identical to Alternative B, the Public Health Service Hospital is excluded and, in addition under this option, the Letterman Army Hospital and Research Center would be excluded. Alternative D, the partial military reuse option, shares Alternative B's lower level of overall resource protection and fewer visitor programs and opportunities; but

is similar to Alternative A with respect to inclusion of the former Public Health Service Hospital and otherwise seeking legislation for new management authorities.

Major impact topics assessed for the proposed action and alternatives include natural and cultural resources, traffic and transportation systems, city services, native plant communities, regional economy and employment, noise, and air quality.

SUPPLEMENTARY INFORMATION: Written comments on the draft GMPA/EIS will be accepted until December 21, 1993 and should be addressed to: Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California, 94123. Public meetings will be held on the draft GMPA/EIS in San Francisco, San Rafael, Oakland and Palo Alto, California. The specific dates, times and locations will be announced through news releases. Inquiries on the draft GMPA/EIS or on the public meetings should be directed to the Presidio Planning and Information Office at either the above address or telephone number (415) 556-3111.

Copies of the draft GMPA/EIS are available at the Presidio Project Office, National Park Service, Building 102, Montgomery Street, Presidio of San Francisco, CA 94129. Copies are also available for inspection at libraries located in San Francisco Bay area and at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison Street, Suite 600, San Francisco, CA 94107-1372.

Dated: October 1, 1993.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 93-25852 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-70-M

Jimmy Carter National Historic Site Advisory Commission; Meeting

AGENCY: National Park Service, Jimmy Carter National Historic Site, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4 p.m., at the following location and date.

DATES: October 29, 1993.

LOCATION: The Windsor Hotel, Roosevelt Board Room, Windsor Avenue,

Americus, Georgia 31709, (912) 924-1555.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924-0343.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Steven Hochman
Dr. James Sterling Young
Dr. Donald B. Schewe
Dr. Henry King Stanford
Dr. Barbara Fields
Director, National Park Service, Ex-Officio member

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 13, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 93-25853 Filed 10-20-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-6212 or (202) 927-6245.

Comments on the following assessment are due 15 days after the date of availability:

None

Comments on the following assessment are due 30 days after the date of availability:

AB-399X, Golden Cat Railroad Corp. petition for individual exemption to discontinue rail service and abandon a rail line (Delta Branch) in Scott and Cape Girardeau Counties, MO. EA available 10/15/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25926 Filed 10-20-93; 8:45 am]

BILLING CODE 7035-01-P

Release of Waybill Data

The Federal Register Notice published on October 12, 1993 at 58 FR 52787, "Release of Waybill Data", incorrectly gave Gellman Research Associates as the requestor. The correct requestor is the Policy and Special Projects Department, Association of American Railroads.

Contact: James A. Nash, (202) 927-6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-25927 Filed 10-20-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Clean Water Act

In compliance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 30, 1993, a proposed consent decree in *United States v. City of Kenner, et al.*, No. 92-2210 "N" was lodged with the United States Court for the Eastern District of Louisiana. The City of Kenner owns and operates publicly owned treatment works ("POTW") in Jefferson Parish, Louisiana pursuant to National Pollutant Discharge Elimination System ("NPDES") Permits LA0038326, LA0038334, and LA0066800. The consent decree requires the City of Kenner to pay a civil penalty to the United States in the sum of \$215,000.00, and to perform certain remedial measures in order to cause Kenner to come into and remain in compliance with the terms and conditions of these Permits and its approved Pretreatment Program.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. City of Kenner, et al.*, D.J. # 90-5-1-1-3615.

The proposed consent decree may be examined at the Office of the Clerk of Court of the United States District Court for the Eastern District of Louisiana, United States Courthouse, 500 Camp St., room C-151, New Orleans, Louisiana, 70130; at the Office of the United States Attorney, 501 Magazine Street, Second Floor, New Orleans, Louisiana, 70130; at the Region 6 Office of the Environmental Protection Agency, 1445 Ross Ave., Dallas, Texas 75202; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of \$5.50 (25 cents per page reproduction costs), made payable to the Consent Decree Library.

Lois J. Schiffer,

Acting Assistant Attorney General,
Environment and Natural Resources Division.

[FR Doc. 93-25893 Filed 10-20-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Settlement Agreement Pursuant to CERCLA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 5, 1993 a proposed Settlement Agreement in *United States v. Lowe*, Civil Action No. H-91-829, was lodged with the United States District Court for the Southern District of Texas. The proposed Settlement Agreement resolves claims against defendant JOC Oil Exploration Company, Inc. ("JOC") for reimbursement of response costs associated with the Brio Superfund Site near Friendswood, Harris County, Texas. These claims were brought against JOC pursuant to section 107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607.

The Settlement Agreement requires defendant JOC to pay \$20,000 in settlement of the United States' claim for response costs. This settlement is based on JOC's limited ability to pay, as it is no longer conducting any businesses.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments

relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Lowe*, Ref. No. 90-11-2-325A.

The proposed Settlement Agreement may be examined at the following locations: (a) Office of the United States Attorney for the Southern District of Texas, 440 Louisiana, Suite 900, Houston, Texas 77002; (b) the Region 6 Office of Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733; (c) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the decree, please enclose a check for copying costs in the amount of \$4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General,
Environment and Natural Resources Division.

[FR Doc. 93-25892 Filed 10-20-93; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Stipulation and Settlement Order Pursuant to Comprehensive Environmental Response, Compensation and Liability Act; In re Superior Toy & Manufacturing Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed settlement of the United States' claims in *In re Superior Toy & Manufacturing Company*, No. 90 B 4481, was lodged with the United States Bankruptcy Court for the Northern District of Illinois on September 30, 1993. The settlement is in the form of a prospective purchaser agreement which resolves CERCLA cost recovery claims asserted against Superior Toy Manufacturing Company ("Superior"), a Chapter 7 Debtor, and the potential liability of the prospective purchaser of Superior's facility in Rockford, Illinois (the "Superior property"). Under the proposed agreement, Superior will apply the \$1,025,000 sale proceeds first to performance of a drum removal at the Superior property, payment of back real estate taxes, and closing costs. Superior will then pay fifty percent of the remaining sale proceeds to the United States. The United States will provide the following parties covenants not to

sue for "Present Contamination" existing at the Superior property as of the effective date of the agreement: Superior, Chapter 7 Trustee Catherine Steege, Thomas A. Nelson, TAN Books & Publishers, Inc. and Continental Bank, N.A.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Superior Toy & Manufacturing Company*, DOJ Ref. #90-11-3-645.

The proposed settlement may be examined at the office of the United States Attorney, Everett McKinley Dirksen Building, room 1200, 219 South Dearborn Street, Chicago, Illinois, 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the settlement document may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 93-25898 Filed 10-20-93; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Stipulation and Settlement Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed stipulation and settlement order in *United States v. Blue Earth Equipment Co. et al.*, Civil Action No. 4-92-938, was lodged on September 15, 1993 with the United States District Court for the District of Minnesota. The stipulation settles the United States' claim against the Maynard Public School District, one of three defendants in this Clean Air Act case brought to enforce the notice and work practice requirements of the National Emission Standard for Hazardous Air Pollutants relating to asbestos renovation operations. Under the stipulation, the Maynard Public School District agrees to settle its alleged liability for a civil penalty of \$3,250.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation and settlement order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Blue Earth Equipment Co. et al.*, DOJ Ref. #90-5-2-1 1560.

The proposed stipulation and settlement order may be examined at the office of the United States Attorney, 234 United States Courthouse, 110 South 4th Street, Minneapolis, Minnesota 55401; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$1.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Curden,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 93-25897 Filed 10-20-93; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed First Modified Consent Decree in *United States v. Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc., and the State of Louisiana v. Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc.*, Civil Action No. 87-317, Section B, was lodged on 9/29/93 with the United States District Court for the Middle District of Louisiana. This First Modified Consent Decree revises injunctive relief requirements because Defendants are closing the facility pursuant to State and Federal Resource Conservation and Recovery Act ("RCRA") requirements. The proposed modified Decree stays and, after the facility is closed, deletes the requirements for a second environmental audit and implementation of a computerized waste tracking system. This proposed

Decree adds leachate monitoring and recordkeeping requirements and a requirement that Defendants retain all existing records pertaining to the waste disposal in the cells at the facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed First Modified Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc., and the State of Louisiana v. Browning-Ferris Industries, Chemical Services, Inc. and CECOS International, Inc.*, DOJ Ref. No. 90-7-1-404.

The proposed First Modified Consent Decree may be examined at the Office of the United States Attorney, 339 Florida St., Sixth Floor, Baton Rouge, LA; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$17.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. John C. Cruden,
Chief, Environment and Natural Resources Division.

[FR Doc. 93-25895 Filed 10-20-93; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. CSX Transportation, Inc.* Civ No. 92-356-Civ-J-10 was lodged with the United States District Court for the Middle District of Florida (Jacksonville Division) on September 27, 1993. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 309 and 311 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1319, 1321. In its complaint, the United States alleged that CSX had discharged pollutants to navigable waters in excess of permitted levels at six separate facilities. Five of the facilities are

located in Florida, the sixth in North Carolina.

The proposed Consent Decree provides that CSX will pay a civil penalty of \$ 3.0 million in settlement of claims alleged in the Complaint. In addition, the Decree requires that CSX perform compliance audits at 22 active facilities in Alabama, Florida, Georgia, Kentucky, South Carolina, and Tennessee, to determine whether these facilities are in compliance with Clean Water Act requirements. In addition, the Decree requires that CSX perform environmental assessments at an additional 61 inactive facilities located in 15 states. Furthermore, the Decree requires that CX develop and implement an Environmental Awareness Training Program for its managers and supervisors. Finally, the Decree requires that CSX develop, and share with other railroads nationwide, a Stormwater Assessment Manual, that is designed to provide suggested ways of capturing and treating contaminated stormwater runoff from railroad maintenance and refueling facilities.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. CSX Transportation, Inc.*, D.O.J. Ref. No. 90-5-1-3493.

This proposed Consent Decree may be examined at the offices of the United States Attorney, 311 West Monroe Street, room 409, Jacksonville, Florida 32202, at the Office of Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$14.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. John C. Cruden,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 93-25894 Filed 10-20-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree in Action Under the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 24, 1993, the United States Department of Justice, by the authority of the Attorney General and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency, lodged a Consent Decree in *United States v. Laclede Steel Company*, Civil Action No. 90-03460, with the United States District Court for the Southern District of Illinois. The Consent Decree addresses the liability of Laclede Steel Company ("Laclede") in an action brought under section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a) and (g), for alleged violations of land disposal restrictions at Laclede's facility in Alton, Illinois. The Consent Decree requires Laclede to pay a civil penalty of \$300,000. In addition, the Consent Decree requires Laclede to implement a state-approved closure plan for the Alton facility.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Laclede Steel Company, DOJ* Reference No. 90-7-1-549.

The Consent Decree may be examined at the Region V Office of Regional Counsel, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, United States Department of Justice, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202-624-0892). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check for \$7.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,
Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 93-25896 Filed 10-20-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-28,898]

**Augat Automotive; San Antonio, TX;
Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1993 in response to a worker petition which was filed on behalf of workers at Augat Automotive, San Antonio, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of October, 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-25907 Filed 10-20-93; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-28,805]

**Bull HN Information Systems, Phoenix,
Arizona; Negative Determination
Regarding Application for
Reconsideration**

By an application dated September 21, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 15, 1993 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Company officials state that the Department (1) Did not address the Research and Development worker separations and (2) the workers should be certified for TAA since nothing has changed since the workers were last certified in 1991 under TA-W-25,527.

The Department's denial was based on the fact that the Phoenix workers currently do not produce an article within the meaning of the Trade Act of

1974. The workers perform research and development operations and refurbish computers that were previously produced and sold by the subject firm.

Workers providing services can only be certified in very limited circumstances. Their worker separations must have been caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under a certification for TAA. These limited conditions for service workers have not been met.

The findings show that the last production of a new computer at the subject plant was in 1991 when the workers who produced the 8000 series computers were covered under the certification TA-W-25,527 issued on June 24, 1991. The 8000 series computers are now being produced at another corporate facility in Boston but the workers are not under a certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of October 1993.

Stephen A. Wandner,
Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-25903 Filed 10-20-93; 8:45 am]
BILLING CODE 4510-30-M

**Notice of Determinations Regarding
Eligibility To Apply for Worker
Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September and October, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and
(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,921; *Mobil Mining & Mineral Co., Nichols, FL*
TA-W-28,724; *Cherry-Burrell Process Equipment Div., Little Falls, NY*
TA-W-28,218; *Phoenix Steel, Inc., Eau Claire, WI*
TA-W-28,725; *Schmitt Forge, Inc., Portland, OR*
TA-W-28,771; *General Motors Corp., Inland Fisher Guide, Trenton, NJ*
TA-W-28,868; *GEC Marconi, Electronic Systems, San Marcos, CA*
TA-W-28,863; *I.C. Rainbows, Homestead, PA*
TA-W-28,910; *Micro Abrasive Corp., Westfield, MA*
TA-W-28,887; *AT&T Merrimack Valley Works, North Andover, MA*
TA-W-28,714; *Barnes Group, Inc., Advanced Fabrications Div., Jet Die Plant, Lansing, MI*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,968; *Plains Petroleum Operating Co., Midland, TX*
The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,809; *AT&T Operator Services, Shreveport, LA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,785; *Leviton Manufacturing, Warwick, RI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,905; *Dunbar Slag Co., Inc., Sharon, PA*

U.S. imports of slag (from iron and steel mfg) increased absolutely in 1992 compared to 1991 and declined in the first 6 months of 1993 compared to the same period in 1992.

TA-W-29,022; X-Ray Products Corp., Rico Rivera, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,861; Big Three Industries, Inc., Farrell, PA

U.S. imports of nitrogen, oxygen and argon declined absolutely in 1992 compared to 1991 and in the twelve month period ending June 1993.

TA-W-28,941; Supercomputer Systems, Inc., Eau Claire, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,899; Meehan Seaway Service of Milwaukee, Limited, Milwaukee, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,854; Goulds Pumps, Lubbock, TX

U.S. imports of turbine pumps were negligible in 1991, 1992 and first quarter 1993.

TA-W-28,979; Formosa Exploration, Inc., Riddle, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,851; Digital Equipment Corp., Thin Film Media Manufacturing, Tempe, AZ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,952; Stevcoknit Fabrics Co., Fayetteville, NC

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,876; Sheldahl, Inc., Northfield, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,736; Rhodes Plastics, Linden, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,945; Texas Instruments Computer Systems & Service, Cypress, TX

The workers' firm does not produce an article as required for certification

under Section 222 of the Trade Act of 1974.

TA-W-28,911; Honeywell Keyboard Div., El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,908; Duffy Electronics & Manufacturing Co., Belmar, NJ

Separations at Duffy Electronics & Manufacturing Co., Belmar, NJ were due to a corporate decision to consolidate operations and move all production to another existing domestic company facility.

TA-W-28,920; Alliance Resources (USA), Inc., New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,840; M.O.S.T. Manufacturing, Inc., Monument, CO

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations

TA-W-28,922; General Electro Mechanical Corp., (GEMCOR), Buffalo, NY

A certification was issued covering all workers separated on or after November 11, 1992.

TA-W-29,025; General Motors Corp., Inland Fisher Guide Div., O'Fallon, MO

A certification was issued covering all workers separated on or after September 3, 1992.

TA-W-28,003; Johnson & Johnson Medical, Inc., Arlington, TX

A certification was issued covering all workers separated on or after August 25, 1992.

TA-W-28,890; Sandvik Special Metals Corp., Titanium Sports Div., Kennewick, WA

A certification was issued covering all workers separated on or after July 13, 1992.

TA-W-28,900; Public Group, Huntingdon, TN

A certification was issued covering all workers separated on or after July 15, 1992.

TA-W-28,912; Halliburton Reservoir Services, Carrollton, TX

A certification was issued covering all workers separated on or after August 22, 1992.

TA-W-28,913; Halliburton Energy Services Group, Carrollton, TX

A certification was issued covering all workers separated on or after August 22, 1992.

TA-W-28,878; X'Int Diskette Products, Inc., Allen, TX

A certification was issued covering all workers separated on or after July 7, 1992.

TA-W-28,055; GRL Production Services, Inc., Denver, CO and Operating at All Locations in The Following States: A; TX (Except Houston (28,701), B; WY, C; CA, D; MT, E; ND and F; NM

A certification was issued covering all workers separated on or after September 8, 1992.

TA-W-28,016; Imperial Wallcoverings, Inc., Waterford, NY

A certification was issued covering all workers separated on or after September 7, 1992 and before October 5, 1993.

TA-W-28,931; Fisher-Rosemount Systems, Inc., Burnsville, MN

A certification was issued covering all workers separated on or after May 18, 1992.

TA-W-28,998, TA-W-29,020; Chalk Line, Inc., Shelbyville, TN and Anniston, AL

A certification was issued covering all workers separated on or after August 17, 1992 and August 27, 1992 respectively.

TA-W-28,939; Radiometer Technology, Inc., Westlake, OH

A certification was issued covering all workers separated on or after July 1, 1993.

I hereby certify that the aforementioned determinations were issued during the month of September and October, 1993. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours will be mailed to persons to write to the above address.

Dated: October 13, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-25905 Filed 10-20-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 1, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 1, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of October, 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Sundstrand Electrical Power Systems (IUE).	Lima, OH	10/04/93	09/20/93	29,086	Electrical components.
Charles E. Gillman Co (Co)	Rio Rico, AZ	10/04/93	09/21/93	29,087	Wire harnesses.
Season-ALL Industries, Inc (IUE)	Indiana, PA	10/04/93	09/10/93	29,088	Extrusion of metal and paint processing.
Pikes Peak Greenhouses, Inc (Workers).	Lafayette, CO	10/04/93	09/20/93	29,089	Fresh flowers and roses.
McMurry Oil Tools, Inc (Workers)	Huntsville, TX	10/04/93	09/17/93	29,090	Oilfield tools.
UVC Corp (Workers)	Irvine, CA	10/04/93	09/14/93	29,091	Video compressions.
Great Northern Paper, Inc (CO)	Millinocket, ME	10/04/93	09/14/93	29,092	Newsprint paper.
Gladco Services, Inc (Co)	Ira, TX	10/04/93	10/04/93	29,093	Oilwell services.
Mueller Industries (IAM)	Shelby, OH	10/04/93	09/24/93	29,094	Plastic and copper pipe fittings.
AeroJet Electronic Systems (Workers)	Azusa, CA	10/04/93	09/01/93	29,095	Electronic sensors.
Nelbro Packing Co (WSLC)	Anacortes, WA	10/04/93	09/27/93	29,096	Processed salmon and other species.
F.D. Services, Inc (Workers)	Casper, WY	10/04/93	09/23/93	29,097	Oil and gas drilling.
Northrop Corporation (Workers)	Hawthorne, CA	10/04/93	09/28/93	29,098	Skin panels and floor beans for 747.
Northrop Aircraft (Workers)	Anaheim, CA	10/04/93	09/28/93	29,099	Skin panels and floor beans for 747.

[FR Doc. 93-25904 Filed 10-20-93; 8:45 am]
BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-8A]

Duration of Copyright Term of Protection

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office is preparing a report on the arguments for and against possible amendment of the copyright law to extend the duration of copyright protection under U.S. copyright law. In order to assist in the preparation of this report, the Copyright Office held an open public hearing on September 29, 1993 to obtain public input, and requested the submission of written comments. By this notice, the Copyright Office extends the time for filing written comments until November 30, 1993.

DATES: Comments including reply comments are due November 30, 1993.

ADDRESSES: Interested persons should submit ten copies of their written comments, if delivered by mail, to: Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, ten copies should be brought to: Office of the General Counsel, James Madison Memorial Building, room LM-407, 101 Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Office is conducting a study examining the term of protection for copyrighted works under U.S. law, 17 U.S.C. 300 *et seq.* This study is conducted in light of the recent developments in Europe favoring harmonization of the terms of protection. For further information about the background of the study, see the notice at 58 FR 40838 (July 30, 1993) inviting public comment and announcing the hearing, which was subsequently held on September 29, 1993.

The Copyright Office invites written comment from any interested persons on or before November 30, 1993.

Dated: October 13, 1993.

Dorothy Schrader,
Associate Register of Copyrights for Legal Affairs.

[FR Doc. 93-25837 Filed 10-20-93; 8:45 am]
BILLING CODE 1410-07-F

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 5-6, 1993, from 9 a.m. to 5:30 p.m. on November 5, 1993 and from 9 a.m. to 1 p.m. on November 6, 1993, in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public. Topics for discussion will include opening remarks; Legislative update; reports from the Arts Education Steering Group Report; Program Review

and/or Guidelines and/or Application Review for the Dance, Design Arts, Challenge, Expansion Arts, International, Media Arts, and Presenting and Commissioning Programs; and an update of the International Program.

If, in the course of application discussion review, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Ginny Terzano, Director, Public Affairs Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5570.

Dated: October 15, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-25833 Filed 10-20-93; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 15-19, 1993 from 9 a.m. to 9 p.m. on November 15-18, 1993, and from 9:30 a.m. to 5 p.m. on November 19, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5 p.m. on November 19, 1993 for policy and guidelines discussion.

The remaining portions of this meeting from 9 a.m. to 9 p.m. on November 15-18, 1993, and from 9 a.m. to 3:30 p.m. on November 19, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels, which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: October 14, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-25834 Filed 10-20-93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.

Date and time: November 18, 1993, 8:30 a.m.-5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, room 615.

Type of meeting: Closed meeting to discuss proposals.

Contact person: Dr. James P. Wright, Program Director, Education, Human

Resources, and Special Programs, Division of Astronomical Sciences, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Purpose of meeting: Review proposals for REU sites.

Agenda: The proposals will be discussed and reviewed by participants of the panel.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-25911 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Cell Biology (Sub-Panel B)

Date and time: November 8-10, 1993; 8:30 a.m. to 6 p.m.

Place: Holiday Inn, Clarendon Conference Room, 4610 North Fairfax Drive, Arlington, VA 22203.

Type of meeting: Closed.

Contact person: Dr. Eve Ida Barak, Program Director for Cell Biology Program (Cellular Organization); National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: 202/357-7474.

Purpose of meeting: To provide advice and recommendations concerning research proposals submitted to the Cell Biology Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals in the area of Cell Biology (Cellular Organization) as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Walker,

Committee Management Officer.

[FR Doc. 93-25917 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Economics, Decision, and Management Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following two meetings:

Name: Advisory Panel for Economics, Decision, Risk and Management Sciences #1759.

Date and time: November 12-13, 1993; 8:30 a.m.-5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 330-room 340, Arlington, VA 22230.

Contact persons: Dr. Daniel H. Newlon, Dr. Lynn A. Pollnow and Dr. Martin Williams, Program Directors for Economics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357-9674.

Agenda: To review and evaluate economic proposals as part of the selection process for awards.

Date and time: November 18-19, 1993; 8:30 a.m.-5:30 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Contact persons: Dr. Robin Cantor and Dr. Hal Arkes, Program Directors for Decision, Risk, and Management Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (202) 357-7569-(202) 357-7417.

Agenda: To review and evaluate decision, risk, and management science proposals as part of the selection process for awards.

Types of meetings: Closed.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93-25914 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources.

Date and time: Nov. 9, 1993, 12:30 p.m.-5 p.m. Nov. 10, 1993, 8:30 a.m.-5 p.m.

Place: Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, VA 22203.

Type of meeting: Open.

Contact person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, room 805, Arlington, VA 22230, (703) 306-1604.

Summary minutes: May be obtained from contact person listed above.

Purpose of committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1993 Programs and Initiatives Review of FY 1994 Programs and Initiatives Strategic Planning for FY 1995 and Beyond.

Dated: October 18, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93-25910 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Engineering, Education and Centers; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and time: November 16, 1993; 8:30 a.m.

Place: 4201 Wilson Boulevard, Arlington, Virginia, room 7 and 8.

Type of meeting: Closed.

Contact person: Ms. Susan Kemnitzer, National Science Foundation, 1776 G St. NW., Washington, DC 20550. Telephone: (202) 786-9631.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experiences For Undergraduates proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93-25913 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: November 17-18, 1993; 9 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, room 3602.

Type of meeting: Closed.

Contact person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Telephone: (703) 306-1559.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate San Andreas Fault/KTB proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93-25912 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and times: November 15, 1993, 6 p.m.-9 p.m.; November 16, 1993, 8 a.m.-9 p.m.; November 17, 1993, 8 a.m.-5 p.m.

Place: National Science Foundation at Stafford Place; 4201 Wilson Boulevard, Arlington, VA 22230; rooms 370, 340, 320, 310.02, and 390.

Type of meetings: Closed.

Contact person: Dr. W. Lance Hanworth or Dr. John C. Hurt, Program Directors, Materials Research Science and Engineering Center, Division of Materials Research, Room 408 National Science Foundation, Washington, DC, 20550. Telephone (202) 357-9791.

Purpose of meetings: To provide advice and recommendations concerning pre-proposals submitted to NSF for financial support by the Materials Research Science and Engineering Centers Program.

Agenda: Review and evaluate pre-proposals as part of the selection process for subsequent solicitation of full proposals.

Reason for closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-25915 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience.

Date and time: November 4th & 5th, 1993; 9 a.m.-5 p.m.

Place: National Science Foundation, room 380, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Part-Open.

Contact person: Dr. Kathie L. Olsen, Program Director, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1423.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session November 4th & 5th, 1993; 9 a.m.-5 p.m. and November 5th, 1993; except where noted below. To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Open session: November 5th, 1993 10 a.m.-11:30 a.m.; To discuss research trends and opportunities in Neuroscience.

Reason for closing: The proposal being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-25909 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

President's Committee on the National Medal of Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science.

Date and time: Monday, November 8, 1993; 9 a.m.-3 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of meeting: Closed.

Contact person: Mrs. Susan E. Fannoney, Staff Assistant, room 545, National Science

Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: 202/357-7512.

Purpose of meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-25918 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Social and Political Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following four meetings.

Name: Advisory Panel for Social and Political Sciences #1761.

Date and time: November 15-16, 1993; 8:30 a.m.-5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 310, Arlington, VA 22230.

Contract persons: Dr. Frank P. Scioli, Jr. and Dr. James Campbell, Program Directors for Political Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357-7534

Agenda: To review and evaluate political science proposals as part of the selection process for awards.

Date and time: November 18-19, 1993; 8:30 a.m.-5:30 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 365, Arlington, VA 22230.

Contract persons: Dr. Susan O. White, Program Director and Dr. Patricia E. White, Staff Associate for Sociology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357-9567.

Agenda: To review and evaluate law and social science proposals as part of the selection process for awards.

Date and time: November 16-17, 8 a.m.-5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, room 365, Arlington, VA 22230.

Contract persons: Dr. William S. Bainbridge and Dr. Martin K. Whyte, Program Directors for Sociology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357-7802.

Agenda: To review and evaluate sociology proposals as part of the selection process for awards.

Date and time: December 13-14, 1993; 8:30 a.m.-5 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Contract persons: Dr. James H. Blackman, Acting Program Director for Methodology, Measurement, and Statistics in the Social Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357-7966.

Agenda: To review and evaluate methodology, measurement, and statistics proposals as part of the selection process for awards.

Type of meeting: Closed.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 18, 1993

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-25916 Filed 10-20-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 16, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1993. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the

remedial actions that were undertaken are also described.

This report discusses four abnormal occurrences at NRC-licensed facilities, three involving medical brachytherapy misadministrations and one involving a research reactor that operated without a safety system. One pool irradiation facility contamination event, two medical misadministrations (one "sodium iodide" and one brachytherapy), and one industrial radiographer overexposure event that were reported by NRC Agreement States are also discussed. The report also contains information updating one previously reported abnormal occurrence and information on three other events of interest.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG-0090, Vol. 16, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 15th day of October 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 93-25891 Filed 10-20-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published on September 23, 1993 (58 FR 49531). Those meetings that are firmly scheduled have had, or will have, an

individual notice published in the *Federal Register* approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1993 ACRS and ACNW full Committee meetings can be obtained by contacting the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m. (EDT).

ACRS Subcommittee Meetings

Advanced Boiling Water Reactors, October 26-27, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GE) ABWR design.

Thermal Hydraulic Phenomena, October 28, 1993, Bethesda, MD. The Subcommittee will review selected aspects of the NRC-RES-sponsored ROSA-V confirmatory test program being developed in support of the Westinghouse AP600 passive plant design certification effort. Specific review topics will include: facility design modifications and additions, the test matrix, and instrumentation and controls. Also, the Subcommittee will discuss the status of the RES contract with Purdue University to perform integral thermal-hydraulic testing in support of the GE Simplified Boiling Water Reactor (SBWR) passive plant design. A portion of this meeting may be closed to discuss material deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)].

Computers in Nuclear Power Plant Operations/Ad Hoc Subcommittee on Design Acceptance Criteria, November 2, 1993, Bethesda, MD. The Subcommittees will review Chapter 7, "Instrumentation and Control Systems," of the Standard Safety Analysis Report and the Associated Certified Design Material (Tier 1) for the ABWR design, and related matters. A portion of this

meeting may be closed to discuss material deemed proprietary by GE [5 U.S.C. 552b(c)(4)].

Safeguards and Security, November 3, 1993, Bethesda, MD. The Subcommittee will review the proposed Commission paper on Internal Threat, SECY-93-270, "Proposed Amendments to 10 CFR part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants," and safeguards and security requirements for the GE Advanced Boiling Water Reactor design. A portion of this meeting may be closed to discuss safeguards and security information [5 U.S.C. 552b(c)(3)].

Planning and Procedures, November 3, 1993, Bethesda, MD. (2 p.m.-4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, November 16-17, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

Individual Plant Examinations, November 18, 1993, Bethesda, MD. The Subcommittee will discuss the: (1) Status of and insights gained from the Individual Plant Examination (IPE) Program, (2) general status of the methodologies used by the licensees, (3) status of resolution of generic issues through the IPE and Individual Plant Examination of External Events (IPEEE) programs, and (4) general status of accident management programs.

ABB-CE Standard Plant Designs, December, 1993, Bethesda, MD. The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB-CE System 80+ design.

Planning and Procedures, December 8, 1993, Bethesda, MD (4 p.m.-6 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Materials and Metallurgy, December 16, 1993, Bethesda, MD. The Subcommittee will discuss with representatives of the NRC staff and NUMARC regarding steam generator

operating experiences and related rulemaking activities.

Thermal Hydraulic Phenomena, December 17, 1993, Bethesda, MD. The Subcommittee will discuss the results of the NRC staff's inspection of GE's QA Program Plan for the SBWR GIST Test Facility and TRACG code. A portion of this meeting may be closed to discuss information deemed proprietary by GE [5 U.S.C. 552b(c)(4)].

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on ABWR issues for consideration by the full Committee.

ACRS Full Committee Meetings

403rd ACRS Meeting, November 4–6, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *PRA Working Group Final Report*—Review and comment on the proposed PRA Working Group Final Report and an associated Commission paper. Representatives of the NRC staff will participate.

*B. *Revised Security Requirements*—Review and comment on the proposed Commission paper on Internal Threat, SECY-93-270, "Proposed Amendments to 10 CFR part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants," and safeguards and security requirements for the GE ABWR design. A portion of this session may be closed to discuss safeguards and security information [5 U.S.C. 552b(c)(3)]. Representatives of the NRC staff will participate.

*C. *NRC-RES ROSA AP600 Confirmatory Test Program*—Review and comment on the adequacy of the proposed text matrix and modifications and additions to the ROSA test facility prior to initiation of the RES test program in support of the AP600 design certification review. A portion of this session may be closed to discuss material deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)]. Representatives of the NRC staff will participate.

D. *Preapplication Safety Evaluation Report (PSER) for the PRISM Design*—Review and comment on the NRC staff's draft PSER for the PRISM liquid-metal-cooled reactor design. Representatives of the NRC staff will participate.

E. *Instrumentation and Control Systems and Certified Design Material for the ABWR Design*—Review and comment on Chapter 7, "Instrumentation and Control Systems," of the Standard Safety Analysis Report for the ABWR design and Certified

Design Material (Tier 1) for the Instrumentation and Control Systems, Human Factors, Radiation Protection, and Piping Design. Representatives of the NRC staff and GE will participate.

F. *Regulatory Treatment of Non-Safety Systems*—Review and comment on the draft Commission paper that includes proposed NRC staff positions on issues related to the regulatory treatment of non-safety systems. Representatives of the NRC staff will participate.

G. *Technical Training Programs*—Hear a briefing by and hold discussions with representatives of the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) on the technical training programs being developed by AEOD for the Technical Training Center in Chattanooga, Tennessee.

*H. *Westinghouse Analytical and Experimental Programs Related to the AP600 Passive Plant Design Certification*—Hear briefings by and hold discussions with representatives of the Westinghouse Electric Corporation and the NRC staff regarding the Westinghouse analytical and experimental programs related to the AP600 passive plant design certification effort. A portion of this session may be closed to discuss information deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)].

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed pursuant to 5 U.S.C. 552B(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *ACRS Subcommittee Activities*—Hear a report and hold a discussion regarding the activities of the Advanced Boiling Water Reactors Subcommittee.

L. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

M. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

405th ACRS Meeting, January 6–8, 1994, Bethesda, MD. Agenda to be announced.

406th ACRS Meeting, February 10–12, 1994, Bethesda, MD. Agenda to be announced.

ACNW Full Committee Meetings

58th ACNW Meeting, October 27–28, 1993, Holiday Inn, Bethesda, MD. During this meeting, the Committee plans to:

A. Continue discussions of matters related to implementation plans for future ACNW activities, including the preparation of reports on ACNW protocols, topics for review, and resource requirements.

*B. Continue discussions of matters related to the appointment of new members, and organizational and personnel matters related to the ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

C. Hear reports from ACNW members and staff on recent technical meetings that they have attended. Topics will include: radionuclide migration and related near-field phenomena, hydrological research, the Exploratory Studies Facility, and surface-based testing associated with the Yucca Mountain Project. Representatives of the NRC staff will participate, as appropriate.

*D. Elect ACNW officers for CY 1994. This session will be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

E. Discuss topics proposed for consideration during future ACNW meetings.

F. Hear a briefing by and hold discussions with representatives of the NRC's Office for Analysis and Evaluation of Operational Data (AEOD) on technical training programs being developed by AEOD for the Technical Training Center in Chattanooga, Tennessee.

G. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

59th ACNW Meeting, November 15–16, 1993, Bethesda, MD. Agenda to be announced.

60th ACNW Meeting, December 15, 1993, St. Tropez All Suite Hotel, Las Vegas, NV. Agenda to be announced.

ACNW Working Group Meetings

Characterization of the Unsaturated Zone Flow and Transport Properties, December 14, 1993, St. Tropez All Suite Hotel, Las Vegas, NV. The Working Group will examine the relationships between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

Dated: October 15, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93-25890 Filed 10-20-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 3, 1993, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of certain portions that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 1993—2 p.m. Until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and

actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefore can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492-4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 13, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-25884 Filed 10-20-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittee on Computers in Nuclear Power Plant Operations and Ad Hoc Subcommittee on Design Acceptance Criteria

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations and the Ad Hoc Subcommittee on Design Acceptance Criteria will hold a joint meeting on November 2, 1993, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss information deemed proprietary to General Electric Nuclear Energy (GE) [5 U.S.C. 552b(c)(4)].

The agenda for the subject meeting shall be as follows:

Tuesday, November 2, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittees will review Chapter 7, "Instrumentation and Control Systems," of the Standard Safety

Analysis Report and associated Certified Design Material (Tier 1) for the ABWR design, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, its consultants, GE representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492-8972) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-25885 Filed 10-20-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safeguards and Security

The ACRS Subcommittee on Safeguards and Security will hold a meeting on November 3, 1993, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss safeguards and security information [5 U.S.C. 552(c)(3)].

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the proposed Commission paper on Internal Threat, SECY-93-270, "Proposed Amendments to 10 CFR part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants," and safeguards and security requirements for the GE Advanced Boiling Water Reactor design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93-25886 Filed 10-20-93; 8:45 am]

BILLING CODE 7590-01-M

Draft NUREG: Issuance Availability

The Nuclear Regulatory Commission has issued a draft report entitled "Revised Analyses of Decommissioning for the Reference Pressurized Water Reactor Power Station" (NUREG/CR-5884). This draft report, prepared for the NRC by Battelle Pacific Northwest Laboratories (PNL), is available for review and comment.

The draft report presents the results of a review and reevaluation of the 1978 pressurized water reactor (PWR) decommissioning study (NUREG/CR-0130) and subsequent addenda which addressed technology, safety and cost issues associated with decommissioning a large nuclear power plant. This reevaluation was performed to update the current cost estimates to decommission the reference PWR which was Trojan.

This report should be viewed as a first step in developing a more parametric approach to estimating decommissioning costs and comments on the usefulness of such an approach are requested. The NRC staff is particularly interested in comments on the usefulness of the present report in terms of preparation of case specific parametric analyses. The boiling water reactor (BWR) reevaluation underway at this time will incorporate additional parametric analyses to permit a more comprehensive look at decommissioning costs. This report will be issued in early 1994 for public comment. The results of these studies, including input from the public, will be utilized by the NRC staff as part of its effort to determine if revisions of the decommissioning regulations are warranted.

A separate draft report, NUREG/CR-6054, entitled "Estimating Pressurized Water Reactor Decommissioning Costs" is also being issued which describes a computer program developed by PNL and used in the development of NUREG/CR-5884 to arrive at the cost estimates. This draft report has been prepared in the form of a user's manual. The NRC staff is considering use of the program in evaluating licensee submittals of their decommissioning cost estimates. This report is also being issued for public comment.

NUREG/CR-5884 and NUREG/CR-6054 are not a substitute for NRC regulations, and compliance is not

required. The approaches and/or methods described in these NUREG/CRs are provided for information only. Publication of the reports does not necessarily constitute NRC approval or agreement with the information cited therein.

Copies of NUREG/CR-5884 and NUREG/CR-6054 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Free single copies of draft NUREG/CR-5884 and/or NUREG/CR-6054 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the software for NUREG/CR-6054 will be made available by contacting the NRC Project Manager, George J. Mencinsky, at (301) 492-3735.

Comments on the draft reports should be sent to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. Comments will be most helpful if they are received by December 31, 1993.

For further information contact George J. Mencinsky, Radiation Protection and Health Effects Branch, Mail Stop NLS-139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3735.

Dated at Rockville, Maryland, this 4th day of October, 1993

For the Nuclear Regulatory Commission.

Bill M. Morris,

*Director, Division of Regulatory Applications
Office of Nuclear Regulatory Research.*

[FR Doc. 93-25888 Filed 10-20-93; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of

Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Statement of Authority to Act for Employee
- (2) *Form(s) submitted:* SI-10
- (3) *OMB Number:* 3220-0034
- (4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
- (5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
- (6) *Frequency of response:* On occasion
- (7) *Respondents:* Individuals or households, Businesses or other for-profit
- (8) *Estimated annual number of respondents:* 400
- (9) *Total annual responses:* 400
- (10) *Average time per response:* .1 hours
- (11) *Total annual reporting hours:* 40
- (12) *Collection description:* Under 20 CFR 335.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits executed by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.

[FR Doc. 93-25813 Filed 10-20-93; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33055; File No. SR-CHX-93-25]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Establish a Policy Concerning the Designated Primary Market Maker of a Basket "Clearing the Post"

October 15, 1993.

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 October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members the following policy concerning the Designated Primary Market Maker ("DPM") in a Basket (Exchange Article XXVI) and "clearing the post:"

The Designated Primary Market Maker, as that term is used in the Exchange's new rules concerning basket trading (Article XXXVI), may comply with the Exchange's "Clearing the Post" Rules by using an electronic order delivery system to send an order to a specialist's post for execution. In the event that such order is not executed by the specialist within ten seconds, the Designated Primary Market Maker may send that order to another exchange for execution. If the Designated Primary Market Maker sends an order to another exchange because the order was not executed by the specialist, but there are public orders in the specialist's book at the same price that could have been executed against the Designated Primary Market Maker's order if the Designated Primary Market Maker's order had been executed at the post, the specialist shall still be obligated to execute those orders (up to the size of the Designated Primary Market Maker's order) at such orders' limit price.

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 change is to publish to members an Exchange policy, concerning the manner in which the DPM for a basket may clear the post.

The proposed policy would permit the DPM to clear the post electronically rather than physically walking to the specialists' posts of all the stocks underlying a basket. If, after sending an order to a specialist, the DPM does not get a response within 10 seconds, the DPM would be permitted to send the order to another exchange for execution.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, 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 a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedure Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-25 and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-25942 Filed 10-20-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-33056; File No. SR-CHX-93-24]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Waive Exchange Transaction Fees on Trades in the Chicago Basket

October 15, 1993.

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 October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to waive, through December 31, 1993, Exchange

transaction fees. The text of the proposed rule change is italicized:

(c) Transaction Fee Schedule	45 cents per 100 shares.
Round Lots/ Mixed Lots.	\$100 maximum per trade.
Odd Lots	35 cents per trade.
	\$400 maximum monthly fee.

The above fees shall not apply to transactions in the Chicago Basket ("CXM") through December 31, 1993.

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 change is to waive certain Exchange fees for trades in the Chicago Basket, through December 31, 1993.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-24 and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-25943 Filed 10-20-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-33053; File No. SR-CHX-93-27]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Establish a Policy Concerning the Designated Primary Market Maker and the Registered Market Maker of a Basket

October 15, 1993.

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 October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members an interpretation and policy concerning the interactions between the Designated Primary Market Maker ("DPM") and the Registered Market Makers ("RM") in trading the Chicago Basket ("CXM").¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ Today, the Commission is approving a proposed rule change by the CHX which amends the Rules of the Exchange to establish rules allowing for and governing the trading of standardized baskets on the Exchange Floor, and to trade a specific basket product to be known as the Chicago "CHX" Basket. See Securities Exchange Act Release No. 34-33053 (October 15, 1993) (order approving File No. SR-CHX-93-18).

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 change is to clarify that Article XXXIV, Rule 8 of the Exchange's rules providing for a two-thirds/one-third parity between a specialist and registered market makers in the same issue will also apply to trades in the CXM.

The Exchange proposes to adopt the following interpretation to Article XXXIV, Rule 8:

.01 When the Designated Primary Market Maker and a Registered Market Maker, as those terms are used in Article XXXVI, are both displaying, through the quotation system, the same bid or offer price for a basket, the Designated Primary Market Maker and the Registered Market Maker will be entitled to participate in transactions on a 2/3 to 1/3 parity, respectively, up to the size of their displayed quotations. (i.e., the Designated Primary Market Maker is entitled to twice the size of a Registered Market Maker's order up to the size of the Designated Primary Market Maker's quotation. Conversely, a Registered Market Maker is entitled to participate at 1/2 the size of the Designated Primary Market Maker's order up to the size of the Registered Market Maker's displayed quotation.) In the event that the Designated Market Maker or a Registered Market Maker has not displayed a size greater than or equal to the size he or she would be entitled to based on the 2/3 to 1/3 parity, the Designated Market Maker or a Registered Market Maker, as the case may be, shall only participate up to their displayed size.

Simultaneously with this filing, the Exchange has requested temporary accelerated approval (for 60 days) of the proposal.²

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, 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 a burden on competition.

² See Securities Exchange Act Release No. 34-33057 (October 15, 1993) (order granting temporary accelerated approval of File No. SR-CHX-93-26).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedure Committee.

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 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-27 and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-25944 Filed 10-20-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33052; File No. SR-NASD-93-56]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Codification of Basic Requirements Respecting Access to the Use of the OTC Bulletin Board Service

October 15, 1993.

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 October 8, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, the NASD has filed this proposed rule change to codify the existing requirements respecting access to and use of the OTC Bulletin Board service ("OTCBB"). Following is the full text of the proposed codification that would appear as a discrete section in the NASD Manual. (Proposed new language is italicized.)

OTC Bulletin Board Service Rules Applicability

Section 1. These rules shall be known as the "OTC Bulletin Board Rules" and govern the operation and use of the OTC Bulletin Board service ("OTCBB" or "Service") by broker-dealers admitted to membership in the National Association of Securities Dealers, Inc. ("NASD") and their associated persons. Unless otherwise indicated, the requirements of the OTC Bulletin Board Rules are in addition to the requirements contained in the NASD's Rules of Fair Practice, By-Laws, Schedules to the By-Laws, and Rules of Practice and Procedure for the Automated Confirmation Transaction Service.

Operation of the Service

Section 2. The OTCBB provides an electronic quotation medium for subscribing members to reflect market making interest in OTCBB-eligible securities. Subscribing market makers can utilize the Service to enter, update, and display their proprietary quotations in individual securities on a real-time

basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced indication of interest (including "bid wanted" or "offer wanted" indications); or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. A subscribing market maker can also access the proprietary quotations that other firms have entered into the Service along with highest bid and lowest offer (i.e., an inside bid-ask calculation) in any OTCBB-eligible security with at least two market makers displaying two-sided markets.

OTCBB-Eligible Securities

Section 3. The following categories of securities shall be eligible for quotation in the Service:

- (a) any domestic equity security that is not listed on The Nasdaq Stock Market or a registered national securities exchange in the U.S.; and*
- (b) any foreign equity security or American Depositary Receipt ("ADR") that is not listed on The Nasdaq Stock Market or a registered national securities exchange in the U.S.*

Requirements Applicable to Market Makers

Section 4. Market-maker participation in the OTCBB is voluntary and open to any NASD member firm that: satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to Level 3 Nasdaq Workstation service; and demonstrates compliance with (or qualifies for an exception from) Rule 15c2-11 [17 CFR 240.15c2-11] under the Securities Exchange Act of 1934 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Section 4 of Schedule H to the NASD By-Laws sets forth the procedure for demonstrating compliance with Rule 15c2-11.

OTCBB-eligible securities that meet the frequency-of-quotation requirement for the so called "piggyback" exception in paragraph (f)(3)(i) of Rule 15c2-11 are identified in the Service as "active" securities. A member can commence market making in any active security by registering as a market maker through a Nasdaq Workstation at the firm. In all other instances, a member must follow the procedure contained in Section 4 of Schedule H to become qualified as a market maker in a particular OTCBB-eligible security.¹

¹ On February 28, 1992, the Securities and Exchange Commission granted the NASD's request to create a limited exemption from Rule 15c2-11 that permits a broker-dealer to publish in or submit to a quotation medium quotations for a security

(a) Permissible Quotation Entries.

1. A member firm that has qualified as a market maker in a particular OTCBB-eligible security may enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" indications) or a bid or offer accompanied by a modifier to reflect unsolicited customer interest. Every quotation entry must include the appropriate telephone number for the firm's trading desk.

2. A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Section 5 of Schedule H to the NASD By-Laws. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4 p.m. E.T.

3. A priced bid and/or offer entered into the Service for a foreign equity security or an ADR shall be non-firm.² Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. E.T., and once between noon and 12:30 p.m. E.T.³

(b) Voluntary Termination of Registration.

A market maker can voluntarily terminate its registration in an OTCBB-eligible security by withdrawing its quotations in that security from the Service. The firm may re-register to

immediately after such security is no longer authorized for quotation in The Nasdaq Stock Market, without having information specified by the Rule. This exemption is only available if all the following conditions are satisfied:

(1) the security's removal was attributable solely to the issuer's failure to satisfy the revised maintenance standards approved in Release No. 34-29638 (August 30, 1991), 56 FR 44108 (September 6, 1991);

(2) the security must have been quoted continuously in The Nasdaq Stock Market during the thirty calendar days preceding its delisting, exclusive of any trading halt not exceeding one day to permit the dissemination of material news concerning the security's issuer;

(3) the issuer must not be the subject of bankruptcy proceedings;

(4) the issuer must be current in its reporting pursuant to section 13(a) or 15(d) of the Exchange Act; and

(5) a broker-dealer relying upon this exemption must have been a market maker registered with the NASD in the security during the thirty day period preceding its removal from The Nasdaq Stock Market.

² *The non-firm or indicative nature of a priced entry in a foreign or ADR issue is specifically identified on the montage of market maker quotation accessible through the Nasdaq Workstation service for this subset of OTCBB-eligible securities.*

³ *Examples of entries that would be considered an update include a market maker inserting a new, non-firm priced quotation, substituting an unpriced indication for a non-firm priced entry, or an initial registration without a price.*

quote the security by satisfying the requirements specified above in this Section.

Transaction Reporting

Section 5. Member firms that affect transactions in OTCBB-eligible securities shall report them pursuant to the requirements of Part XIII of Schedule D to the NASD By-Laws.

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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 codify various operational requirements that the Commission has approved since the OTCBB was launched as a pilot program on June 1, 1990. More specifically, these requirements are contained in the following Rule 19b-4 filing made by the NASD: (1) File No. SR-NASD-88-19 (as amended), approved in Securities Exchange Act Release No. 27975 (May 30, 1990) and containing the basic operational requirements for the OTCBB; (2) File No. SR-NASD-90-37, approved in Securities Exchange Act Release No. 28404 (August 31, 1990), and expanding by one-half hour quotation-update period applicable to market makers in foreign/ADR issues; (3) File No. SR-NASD-91-12, approved in Securities Exchange Act Release No. 29261 (May 31, 1991), and establishing a firmness requirement for all price bids/offers in domestic equity securities; and (4) File No. SR-NASD-91-38, approved in Securities Exchange Act Release No. 29616 (August 27, 1991) and establishing the parameters for an inside bid-ask calculation.⁴

⁴For any equity security quoted in the OTCBB, an inside bid-ask calculation (i.e., the highest bid and lowest offer being displayed by market makers registered in a particular security) is available only if the security has at least two registered market makers, each displaying a period bid and offer. If additional market makers are displaying either one or two-sided quotations, these entries are also

Additionally, the codified language references two recently-approved regulatory initiatives affecting the OTCBB and participating member firms: (1) File No. SR-NASD-92-48—real-time trade reporting requirements for OTC equity securities (Securities Exchange Act Release No. 32647, July 16, 1993) and (2) File No. SR-NASD-93-17—revised minimum quotation size requirements for OTCBB market maker (Securities Exchange Act Release No. 32570, July 1, 1993). These initiatives will be published, respectively, in Part XIII of Schedule D to the NASD By-Laws and Section 5 of Schedule H to the NASD By-Laws.

The requirements embodied in this codification do not reflect any substantive change in the requirements that the Commission had previously approved in the context of the aforementioned filings. Rather, the codification is a restatement of the requirements in the form of operational rules that can be published in the NASD Manual. (The NASD has followed a similar approach in formulating and publishing specialized rules for the Nasdaq International Service and the Fixed Income Pricing System.) As a result, it will be much easier for NASD members to research the pertinent requirements by referencing a discrete section of the NASD manual. In sum, the proposed codification should facilitate the NASD's administration of and member firms' compliance with the operational requirements that are unique to the OTCBB.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6) and (11) of the Act. Section 15A(b)(6) requires, in pertinent part, that NASD rules be designed to prevent fraudulent and manipulative acts or practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general to protect investors and the public interest. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations disseminated by member firms relating to securities traded over-the-counter. The NASD believes that the proposed codification of rules governing participation in the OTCBB is fully consistent with these statutory provisions.

factored into the inside calculation. On the other hand, if the basic requirement of two market makers is not satisfied, an indication is generated denoting that no inside calculation is available.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing

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 findings or (ii) as to which the NASD consents, the Commission will:

A. By order approved such 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, 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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25945 Filed 10-20-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19791; 812-8530]

Security First Life Insurance Company, et al.; Application

October 15, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security First Life Insurance Company ("Security First"), Security First Life Separate Account A ("Account A"), Fidelity Standard Life Insurance Company ("Fidelity Standard", together with Security First, the "Companies"), and Fidelity Standard Life Separate Account ("Fidelity Account", together with Account A, the "Accounts").

RELEVANT 1940 ACT SECTIONS: Order requested under section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Money Market Portfolio of the Variable Insurance Products Fund for shares of the Money Market Series of Security First Trust (the "Trust") held by the Accounts.

FILING DATE: The application was filed on August 10, 1993 and an amended and restated application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 9, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Richard C. Pearson, Esq., The Holden Group, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Michael V. Wible, Special Counsel, both at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Security First, a stock life insurance company founded in 1960 under Delaware law, has its principal executive offices at 11365 West Olympic Boulevard, Los Angeles, California 90064. Security First is a wholly owned subsidiary of the Holden Group, Inc. ("THG"). 59% of the outstanding voting stock of THG is owned by London Insurance Group, Inc. (formerly, Lonvest Corporation), a Canadian insurance service corporation and publicly traded subsidiary of Trilon Financial Corporation. 40% of the outstanding voting stock of THG is owned by The Holden Company, a general partnership controlled by Glen A. Holden, and the remaining 1% is held by three individuals who are current or former employees of THG.

2. Account A, established by Security First on May 29, 1980 in accordance with the Delaware Insurance Code, is used to fund various variable annuity contracts issued by Security First. Account A is registered with the Commission under the 1940 Act as a unit investment trust. Account A is divided into a number of series, each of which invests solely in the shares of a registered investment company, or investment series thereof, including shares of Security First Trust, a registered open-end diversified management investment company.

3. Fidelity Standard, a stock life insurance company founded in 1981 under Delaware law, is a wholly owned subsidiary of Security First. The principal executive offices of Fidelity Standard are located at 11265 West Olympic Boulevard, Los Angeles, California 90064.

4. Fidelity Account, established by Fidelity Standard on May 13, 1985 in accordance with the Delaware Insurance Code, is used to fund variable annuity contracts issued by Fidelity Standard (collectively, with the variable annuity contracts issued by Security First and funded through Account A, the "Contracts"). Fidelity Account is registered with the Commission under the 1940 Act as a unit investment trust. Fidelity Account is divided into a number of series, each of which invests solely in the shares of a registered investment company, or investment series thereof, including shares of the Trust.

5. The Trust has a number of investment series currently available

under the Contracts. The Money Market Series of the Trust seeks preservation of capital, liquidity and the highest possible level of current income consistent with these objectives.

Security First Investment Management Corp. ("Security Management"), a subsidiary of THG and an affiliate of the Companies, provides investment management services to the Money Market Series of the Trust. T. Rowe Price Associates ("T. Rowe") provides investment management services to the Money Market Series of the Trust pursuant to a subadvisory agreement with Security Management. Applicants state that T. Rowe is not affiliated with either of the Companies. Shares of the Money Market Series of the Trust are purchased, without sales charge, for the corresponding series of the Accounts at the net asset value per share next determined following receipt of the applicable payment. Any dividend or capital gain distributions received from the Money Market Series are reinvested in additional shares which are retained as assets of the applicable Account's series. Shares of the Money Market Series of the Trust are redeemed without fee to the Accounts' series to the extent necessary for the Companies to make annuity or other payments under the Contracts.

6. Security Management receives an annual investment advisory and management fee, accrued daily and payable in monthly installments, from the Money Market Series of the Trust based on an annual rate of 0.5% of the average daily net assets of the series. T. Rowe receives a subadvisory fee from Security Management, accrued daily and payable in monthly installments, equal to 0.35% of the average daily net assets of the series. As of the Trust's fiscal year ending July 31, 1993, the Money Market Series had \$4,479,577 in net assets. The total expenses of the Money Market Series of the Trust for that fiscal year were 0.75% of its average net assets. This expense ratio reflects certain advisory fee waivers and reimbursement of expenses by Security Management to the series. Applicants state that in the absence of these advisory fee waivers and expense reimbursements, the expenses of the series for its fiscal year ending July 31, 1993 would have been 1.58%.

7. The Variable Insurance Products Fund (the "Fund"), a Massachusetts business trust, is registered with the Commission under the 1940 Act as an open-end, diversified management investment company. The Fund is divided into separate investment portfolios, including the Money Market Portfolio which seeks to obtain as high

a level of current income as is consistent with preserving capital and providing liquidity. Applicants state that the Money Market Portfolio of the Fund will invest only in high quality U.S. dollar denominated money market securities of domestic and foreign issuers. Fidelity Management & Research Company ("Fidelity Management") is the investment advisor for the Fund. Applicants represent that Fidelity Management is not affiliated with either of the Companies.

8. Fidelity Management's advisory fee for the Money Market Portfolio is based upon the gross income of that portfolio. The amount of the monthly gross income which is equivalent to an annualized yield of 5% or less is subject to an annual fee of 4%. For monthly gross income in excess of an annualized yield of 5%, the annual rate is 6%. The portfolio's management fee is limited, however, to a weighted average of a graduated series of annual limitation rates ranging from 0.5% of its average monthly net assets up to \$1.5 billion to 0.4% of its average monthly net assets in excess of \$6 billion. As of the Fund's fiscal year ending December 31, 1992, the Money Market Portfolio had \$298.9 million in net assets. As of June 30, 1993, net assets decreased to approximately \$288.6 million. The total expenses of the Money Market Portfolio of the Fund for its 1992 fiscal year were .24% of its average net assets.

9. On July 13, 1993, the Board of Directors of each of the Companies adopted resolutions authorizing the substitution of shares of the Money Market Portfolio of the Fund for shares of the Money Market Series of the Trust held by the Accounts.

Applicant's Legal Analysis and Conditions

1. Applicants request that the Commission grant an order pursuant to section 26(b) of the 1940 Act to permit substitution of the shares of the Money Market Portfolio of the Fund for shares of the Money Market Series of the Trust held by the Accounts.

2. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved that substitution based upon a finding that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act. Section 26(b) was intended to allow for Commission scrutiny of proposed substitutions which could force those

shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring a loss of the sales load previously deducted from initial purchase payments, an additional sales load upon reinvestment of the reinvestment proceeds, or both.

3. Applicants state that the Contracts reserve to the Companies the right to replace the shares of the Money Market Series held by the Accounts with shares of another registered investment company such as the Fund, if the substitution is approved by vote of a majority of the outstanding Account units entitled to vote, and as otherwise provided under the 1940 Act.

4. Applicants represent that the Companies believe that further investment in shares of the Money Market Series of the Trust is no longer appropriate in light of the Contracts' purposes. The application states that owners of Contracts with contract values allocated to series of the Accounts invested in the Money Market Series of the Trust will be given the opportunity to vote on the proposed substitution, pursuant to the provisions of section 20 of the 1940 Act and the applicable rules thereunder. If the requisite approval by the owners of the Contracts is obtained, and if the order sought in the application is granted, shares of the Money Market Portfolio of the Fund would be substituted for shares of the Money Market Series of the Trust held by each of the Accounts. Substitution would be effected by redeeming the shares of the Money Market Series held by the Accounts and immediately investing the redemption proceeds in shares of the Money Market Portfolio of the Fund. Applicants state that the substitution will, therefore, be based upon the relative net asset values of the Money Market Series and of the Money Market Portfolio at the time of substitution.

5. Applicants note that the investment objectives of the Money Market Portfolio and of the Money Market Series are substantially similar in that both are "money market" funds. Moreover, Applicants note that both the Money Market Portfolio and the Money Market Series are subject to the requirements relating to diversification, quality and portfolio maturity set forth in Rule 2a-7 under the 1940 Act.

6. Applicants contend that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants represent that because of the diversification requirements applicable to open-end investment companies, and, in particular, because of the

diversification requirements applicable to money market funds pursuant to Rule 2a-7 under the 1940 Act, it is difficult to make appropriate investments for the Money Market Series of the Trust due to the relatively insignificant total net assets, \$4,958,174 as of July 31, 1992, of the series. Therefore, Applicants argue that T. Rowe, in managing the investments of the Money Market Series, is not in a position to invest freely in certain potentially advantageous securities issues.

7. Applicants further argue that expenses incurred by the Money Market Series have remained relatively high at .75% of average net assets even with waiver of advisory fees and reimbursement of expenses. Applicants state that a large portion of these expenses remain fixed, and that these fixed expenses therefore represent a relatively large percentage of average daily net assets because the size of the Money Market Series is relatively small.

8. Although Security Management has previously voluntarily waived its advisory fee below that required by state expense limitations and reimbursed the Money Market Series in order to maintain the expense ratio at 0.75%, the application states that Security Management intends to discontinue the voluntary waiver and reimbursement in the near future.

9. Applicants also note that the Money Market Series has assumed a contingent obligation to repay Security Management for reimbursements made in prior years, provided the repayment would not cause the expenses for the Money Market Series for a fiscal year to exceed expense limitations imposed by state law. Applicants state that, as of July 31, 1993, the aggregate amount of this contingent obligation was \$525,892. Therefore, Applicants argue that even if the assets of the Money Market Series were to grow substantially to a point where repayment of the obligation to Security Management could begin, repayment would, in Applicants' opinion, result in maintaining the expense ratio at a high level. Applicants therefore submit that there is no realistic expectation of the Money Market Series becoming a viable and competitive money market fund in the foreseeable future.

10. Applicants submit that the interests of owners of the Contracts would be better served if the money market investment options under the Contracts were funded through the Money Market Portfolio of the Fund. The Fund offers its shares to separate accounts of insurance companies offering variable annuity and variable life insurance products and, therefore,

the Money Market Portfolio of the Fund is more likely to increase in size than is the Money Market Series of the Trust, whose shares are not actively marketed to other separate accounts. Because of its larger asset base, Applicants argue that it may reasonably be expected that the Money Market Portfolio will not experience the type of difficulties experienced by the Money Market Series in adhering to the diversification requirements of Rule 2a-7 of the 1940 Act. Similarly, Applicants argue that the expense ratio for the Money Market Portfolio, which at .24% is lower than that of the Money Market Series, is likely to continue to be lower in view of the larger asset base of the Money Market Portfolio.

11. Finally, the Companies undertake to assume all costs the Accounts might otherwise bear in connection with the proposed substitution, so that the substitution will be effected at no cost to owners of the Contracts. Applicants represent that there will be no tax consequences to owners of the Contracts or to any Applicant as a result of the substitution. Applicants further represent that, upon liquidation of the Money Market Series, the contingent liability of \$525,892 owned by the Money Market Series to Security Management will be extinguished and therefore will never become payable by owners of the Contracts.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested order under Section 26(b) is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-25946 Filed 10-20-93; 8:45 am]

BILLING CODE 8010-01-M

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 November 22, 1993. 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 (S.F. 83), 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: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629

OMB reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: How Small Businesses Learn
Form No.: N/A

Frequency: One-Time Nonrecurring
Description of Respondents: Small business owners and managers
Annual Responses: 1,632
Annual Burden: 408

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-25870 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: 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 November 22, 1993. 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 (S.F. 83), 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.

Agency clearance officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629

OMB reviewer: Gary Waxman, Office of Information and Budget, New Executive Office Building, Washington, DC 20503

Title: Amendments to License Application

Form No.: SBA Form 415C

Frequency: On occasion

Description of Respondents: Small

Business Investment Companies

Annual Responses: 1,256

Annual Burden: 314

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-25871 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

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 November 22, 1993. 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 (S.F. 83), 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: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629

OMB reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Other Borrower Reports and Records, and Requests

Form No.: N/A

Frequency: On Occasion

Description of Respondents: Recipients of SBA Loans

Annual Responses: 206,000
Annual Burden: 154,500

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-25872 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2669; Amendment #8]

Declaration of Disaster Loan Area; Kansas

The above-numbered Declaration is hereby amended, effective September 29, 1993, to include Cherokee and Crawford Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms. Also, the incident period for this disaster is hereby reopened and amended to be June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bourbon, Labette, and Neosho in Kansas, and Craig and Ottawa Counties in Oklahoma may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993, and for economic injury the deadline is April 25, 1994.

The economic injury number for Kansas is 793500 and for Oklahoma the number is 793600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-25876 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2664; Amendment #5]

Declaration of Disaster Loan Area; Minnesota

The above-numbered Declaration is hereby amended, effective September 28, 1993, to include Dodge, Fillmore, Kandiyohi, and Pope Counties in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing through August 26, 1993.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 1993.

Bernard Kulik

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-25874 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2663; Amendment #7]

Declaration of Disaster Loan Area; Missouri

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated September 28 and 29, 1993 to include Christian, Dallas, Greene, Laclede, Lawrence, Phelps, Polk, Taney, Texas, Washington, Webster, and Wright Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Douglas, Howell, Ozark, and Shannon in Missouri, and Marion County in Arkansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury number for Missouri is 793300 and for Arkansas the number is 793700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-25873 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2682]

Oklahoma (And Contiguous Counties in Kansas and Missouri); Declaration of Disaster Loan Area

Ottawa County and the contiguous counties of Craig and Delaware in the State of Oklahoma; Cherokee County in Kansas; and McDonald and Newton Counties in Missouri constitute a disaster area as a result of damages caused by severe storms and flooding which occurred September 24 through September 26, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 3, 1993 and for economic injury until the close of business on July 5, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102 Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.00
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 268206 for Oklahoma; 268306 for Kansas; and 268406 for Missouri. For economic injury the numbers are 806200 for Oklahoma; 806300 for Kansas; and 806400 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 4, 1993.

Erskine B. Bowles,
Administrator.

[FR Doc. 93-25875 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public

meeting at 12:30 p.m. on Friday, November 5, 1993, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2314, Honolulu, Hawaii 96850, (808) 541-2965.

Dated: October 15, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-25877 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

Cleveland District Advisory Council; Public Meeting

The U.S. Small Business Administration Cleveland District Advisory Council will hold a public meeting from 9 a.m. to 12 noon, Friday, November 5, 1993, at the U.S. Small Business Administration, 1111 Superior Avenue, suite 630, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1111 Superior Avenue, suite 630, Cleveland, Ohio 44114-2507, (216) 522-4180 ext 107.

Dated: October 15, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-25878 Filed 10-20-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1888]

Los Tomates/Matamoros International Bridge III and US 77/83 at Brownsville, Texas: Finding of No Significant Impact

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to issuance of a permit to build a cross-border bridge.

SUMMARY: The Department of State is announcing a finding of no significant

impact on the environment for the Los Tomates/Matamoros International Bridge project sponsored by Cameron County, Texas. A draft environmental assessment of the project was prepared by Traffic Engineers, Inc. of Houston, Texas for the sponsor. The draft environmental assessment was reviewed by over two dozen federal, state, and local agencies. After revisions based on comments received from interested agencies and other parties, the final assessment was reviewed and approved by the Immigration and Naturalization Service, General Services Administration, Department of the Interior Fish and Wildlife Service, Department of Agriculture, Department of Commerce, U.S. Customs Service, U.S. Coast Guard, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, and the Department of State.

Based on the environmental assessment, and comments received, the Department has concluded that issuance of the permit will not have a significant effect on the quality of the human environment within the United States. An environmental impact statement will not be prepared.

ADDRESSES: Copies of the environmental assessment and the finding of no significant impact may be obtained from Stephen R. Gibson, Office of Mexican Affairs, room 4258, Department of State, Washington, DC 20520 (Telephone 202-647-8529).

SUPPLEMENTARY INFORMATION:

Proposed Action

Cameron County, Texas, has requested a permit to build the first span of a new bridge, with access road, to be constructed across the Rio Grande between Brownsville, Texas, USA, and Matamoros, Tamaulipas, Mexico. The bridge will carry passenger and freight traffic, and is intended to relieve the traffic burden on existing bridges and downtown areas. The work will also include the following items: Relocation of 10,100 linear feet of levee; relocation of a local park; addition of land to a wildlife corridor; and construction of a border inspection station. The new bridge is needed because current cross-boundary routes in the area are at capacity, and no further improvements to current routes are possible.

Factors Considered

The bridge sponsors reviewed eight alternatives, including the no-action alternative, and have identified two preferred construction alternatives,

designated "A" and "C" in their Environmental Assessment. Both alternatives are identical except that alternative "A" involves the construction of a road through Lincoln Park in Brownsville, while alternative "C" contemplates the construction of an elevated roadway over the park. No residential or commercial developments are to be removed to construct the project.

Among the factors considered in evaluating the environmental impact of the project were: effects on land use of adjoining properties; opportunities for short and long term development and employment; effects on community cohesion and social groups; traffic safety; changes in travel patterns and travel times; air quality impacts; absorptive capacity of current public facilities; impacts on storm water drainage and the floodplain; and historical and archaeological preservation.

The project sponsors expect that there will be additional development on some adjoining properties, and construction-related employment opportunities due to changes in traffic patterns. There are two other vehicle bridges between Brownsville and Matamoros; both routes have reached or exceeded capacity. The calculated worst one hour CO concentration for the expected traffic load is 3.3 PPM, which is 9.4% of the one hour National Ambient Air Quality Standard.

The preferred alternative routing will not break up any neighborhoods or involve the taking of residential property for construction, thus minimizing impacts on the residential community. All properties are served by city public utilities. Construction will not raise the elevation of the site more than one foot, so there should be no adverse effects on flooding. Storm drainage from the site will be replaced.

Mitigation of traffic noise is proposed for all receivers who will experience an increase in noise levels exceeding the Noise Abatement Criteria. Construction of noise barriers is the most likely approach.

Area farmlands have already been committed to urban, non-agricultural uses within the project area. The project is within the city limits of Brownsville, Texas.

Construction of the first bridge span will cause a slight temporary increase in water turbidity. This is a short-term disturbance without any permanent impact on the quality of Rio Grande river water. No direct or indirect impact on the ground water supply or quality is expected.

The mitigation plan for the project includes the exchange of undeveloped land for Lincoln Park, which lies in the construction zone. Pedestrian-bicycle facilities around Lincoln Park will remain or be reconstructed. Local roads will continue to provide pedestrian-bicycle access across the new traffic lanes.

The project will result in the permanent conversion of Lincoln Park's approximately 23.3 acres to Highway US 77/83 right of way. Lincoln Park will be replaced with 33 acres of land at a nearby location, minimizing the effect of the loss of the original park land. The new park land will adjoin a new Wildlife Refuge. Title to 167.6 acres of undeveloped land, located between the proposed new levee and the Rio Grande, adjacent to the new Lincoln Park site, will be transferred to the U.S. Fish and Wildlife Service (USFWS) by the City of Brownsville. USFWS will, in turn, transfer title of a 17.4 acre National Wildlife Refuge to the City, with covenants to ensure that it remains in its natural state.

The 167.6 acres will become part of the Lower Rio Grande Valley National Wildlife Refuge. A wildlife corridor will be developed between the two (old and new) Refuges. A 100-foot wide buffer zone will surround both properties. This action will increase vegetation and enhance habitat for all wildlife. Actual loss of habitat and wildlife from construction activity will be a short-term disturbance. A mitigation plan to establish and maintain the wildlife travel corridor while avoiding adverse impacts on bilateral flood control efforts has been prepared. This corridor will be maintained for wildlife, not as a park, and will form part of a more than 200-mile long wildlife corridor along the Rio Grande.

5.36 acres of Town Resaca and 0.16 acre of Los Tomates Banco are considered wetland/inland water and will be destroyed by the project. These wetlands will be replaced by an equal or larger acreage of man-made wetland/inland waters located south of the proposed new levee. Nine acres of wetlands/inland water in Lincoln Park will be replaced by the same amount of wetlands within the wildlife corridor.

Actual loss of habitat and potential loss of wildlife is a short-term disturbance with a long-term increase in habitat and potential increase in wildlife, including endangered species such as jaguarundi and ocelot. None of the fish species at the site are endangered or threatened.

Lights on the access road and bridge will illuminate only the roadway. Brush

will be planted below the bridge to provide further protection for wildlife.

Construction methods designed to minimize adverse temporary effects are described in the assessment.

There are no hazardous material waste sites in the immediate project area. The promoter states that the probability of an extreme occurrence is low. Minor spills may occur more frequently. GSA plans a hazardous materials containment area for those transports which require it.

Finding of the Environmental Assessment

On the basis of the Environmental Assessment, a finding of no significant impact ("FONSI") is adopted and an environmental impact statement will not be prepared. This FONSI is issued based on the project sponsor's (Cameron County) full compliance with all mitigation provisions and stipulations for transfer of the site to the General Services Administration as previously agreed.

Dated: October 4, 1993.

Stephen R. Gibson,
Coordinator, Office of Mexican Affairs, U.S.-
Mexico Border Affairs Unit.

[FR Doc. 93-25821 Filed 10-20-93; 8:45 am]

BILLING CODE 4710-10-34

UNITED STATES INFORMATION AGENCY

Summer Institute in the History of the United States for Foreign University Teachers

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications to conduct a six-week, graduate-level summer institute (including an integrated follow-on tour) in the history of the United States for approximately 18 foreign university teachers (primarily members of history and American studies faculties) who are either currently teaching about some aspect of United States history or are planning to do so. Participants will be nominated by United States Information Service (USIS) posts overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the discipline of history and its related subdisciplines, and can demonstrate

expertise in conducting graduate-level programs for foreign educators.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Monday, January 10, 1994. Faxed documents will not be accepted, nor will documents postmarked January 10, 1994, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. In order to allow adequate preparation time, grants should begin by March 15, 1994. Approximate institute program dates should be July 2 to August 12, 1994. Participants will be scheduled to arrive in the U.S. on or about July 1, and depart on August 13, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Summer Institute in the History of the United States for Foreign University Teachers, Grants Management Division, E/XE, 301 4th Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations or institutions should contact Don Q. Washington at the U.S. Information Agency, Division for the Study of the U.S., E/AAS, room 256, 301 4th St. SW., Washington, DC 20547, telephone: (202) 619-4559, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). Programs seek to increase mutual understanding between the people of the United States and the people of other countries. Pursuant to the Bureau's authorizing legislation, programs must "maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life," and must "maintain their scholarly integrity and shall meet the highest standards of academic excellence * * *"

Overview: The Summer Institute in the History of the United States for Foreign University Teachers aims to provide approximately 18 foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the United

States through the study of a field or specialized topic of American history. The proposed field or topic should be sufficiently broad to expose participants to the range of the U.S. historical experience and focused enough to reflect the methods, trends, and perspectives of the current practice of history in the United States. The equivalent of one day a week should be available to participants to pursue individual research interests or curriculum development projects. Participants should be paired with faculty mentors.

Guidelines

Eligibility: Accredited colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the discipline of history and its related sub-disciplines, and can demonstrate expertise in conducting graduate-level programs for foreign educators are eligible to apply. Proposals from consortia may be submitted by a member institution with documented authority to represent all members.

Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in history. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives: The objective of the institute is to provide foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the United States through the study of a field or specialized topic of American history that is sufficiently broad to expose participants to the range of the U.S. historical experience, and focused enough to reflect the methods, trends, and perspectives of the current practice of history in the United States.

Audience: The program should be designed for approximately 18 experienced university-level teachers who are currently teaching some aspect of American history or plan to do so. Institute participants will come primarily from history or American studies faculties. Participants will be nominated by United States Information Service (USIS) posts worldwide and will have high-level fluency in English. Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the

institute and should be held at the beginning of the program.

Program Design: The institute should be specially designed for experienced foreign university-level teachers and should not duplicate courses designed by graduate departments for American graduate-degree candidates. Although it is important that the topics and readings of the institute be clearly organized, the institute should not be structured like a lecture course or a graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues, and concepts. Total program length is six weeks with a minimum of five weeks devoted to the academic component at the host institution. The last week of the seminar should provide an escorted tour that includes two-to-three program days in Washington, DC., to reinforce the academic content of the institute. A visit to one additional site for scholarly purposes is recommended.

Academic and Tour Components: The institute is offered for foreign university teachers in the fields of history and American studies who want to deepen and revitalize their understanding of the foundations, development, and current practice of the history of the United States. The institute should provide participants with an overview of the state of the discipline of history in the United States, and should facilitate their access to scholarly and institutional contacts and to bibliographic information that will be useful to them once they return to their teaching duties in their home countries. It is important that the academic program be clearly organized, and that its topics and organization be broad enough to accommodate the diverse backgrounds of its participants. The institute should begin with an orientation to the U.S. and the American campus. During the course of the institute, participants are expected to pursue individual research or curriculum development projects. The institution that conducts the program should be prepared to offer the level of scholarly resources and professional assistance necessary to support such projects.

The tour component of the institute should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component. It must include two-to-three program days in Washington, DC; a visit to an additional site is recommended. Either the Washington program or the program at an optional third site should include

visits to libraries and archives, and should be structured so that participants are given a chance to pursue individual professional interests. Programming in Washington should include a half-day wrap-up session at the United States Information Agency. The selected grantee institution will consult closely with USIA in planning the Washington itinerary. Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the U.S. following the grant award.

Proposed Budget: Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The total USIA-funded budget must not exceed \$145,300. USIA-funded administrative costs as defined in the application packet must not exceed \$43,648. Applications requesting more than \$43,648 for administrative costs, and/or more than \$145,300 for total institute costs to USIA, or that do not allocate these costs consistent with the budget instructions will not be considered. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. Organizations submitting proposals are urged to cost share program and administrative expenses to the greatest degree possible. Participant international travel costs will be covered by USIA, and should not be included in the budget submission.

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost sharing and matching should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

- (1) Complies with the requirements of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;
- (2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92-9; and,

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and,

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A-133, AICPA SOP 92-9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by USIA's geographic area offices, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria: Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, organization, and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. Content representative of current expert knowledge in the field; consistency with the requirements of the Bureau's legislative charter, in particular, the requirement that the program meet the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library, and other research and scholarly resources; availability, adequacy, and appropriateness of housing and other institutional support important to a collegial setting.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for an evaluation at the conclusion of the institute by the grantee institution.

B. Adequacy of provisions made for "multiplier effect," i.e., future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong, on-site administrative and managerial capabilities (with specific discussion of how managerial and logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute, and follow-on tour.

7. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification: All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 14, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-25805 Filed 10-20-93; 8:45 am]

BILLING CODE 8230-01-M

Summer Institute in the U.S. Economy and Public Policy for Foreign University Teachers

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications to conduct a six-week, graduate-level summer institute (including an integrated follow-on tour) in the American economic system for approximately 18 foreign university teachers (primarily members of economics, social science, business or public policy faculties) who are either currently teaching about some aspect of

the American economic system or are planning to do so. Participants will be selected by the United States Information Service (USIS) posts overseas and will have high-level fluency in English. USIA is asking for detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the discipline of economics and/or public policy and expertise in conducting graduate-level programs for foreign educators.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, D.C. time on Monday, January 10, 1994. Faxed documents will not be accepted, nor will documents postmarked on January 10 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. To allow adequate preparation time, grants should begin by March 15, 1994. Approximate institute program dates should be July 2–August 12, 1994. Participants will be scheduled to arrive in the U.S. on or about July 1 and will depart on August 13.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Summer Institute in the American Economic System for Foreign University Teachers, Grants Management Division, E/XE, 301 4th St., SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Don Q. Washington, Chief, U.S. Studies Branch at the U.S. Information Agency, Office of Academic Programs, Division for the Study of the U.S., 301 4th St., SW., Washington, DC 20547, telephone: (202) 619-4559, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). Programs seek to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of

American political, social, and cultural life. Programs must maintain their scholarly integrity and shall meet the highest standards of academic excellence.

Overview: The summer institute in the U.S. economy and public policy issues aims to provide approximately 18 foreign university educators with opportunities to improve teaching about the U.S. by enriching their knowledge of the U.S. economic system and its relationship to public policy by working with distinguished scholars and by undertaking individuals projects (for example, intensive reading, scholarly research, or writing) of their own choosing. The program should familiarize participants with significant trends resources and current methods in the discipline. The equivalent of one day a week should be available to participants to pursue individual research interests or curriculum development projects. Participants should be paired with faculty mentors.

Guidelines

Eligibility: Accredited universities, colleges, consortia of universities and colleges, and other not-for-profit academic organizations which demonstrate an acknowledged reputation in the relevant subdisciplines of economics and expertise in conducting graduate level programs for foreign educators are eligible to apply. Proposals from consortia may be submitted by a member institution with documented authority to represent all members.

Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director, or one of the key program staff responsible for the academic program, must have an advanced degree in economics. University staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Objectives: The objective of the institute is to provide foreign university teachers with opportunities to improve teaching about the U.S. by enriching their knowledge of the foundations of the American economic system and its current structure and functioning, with special reference to public policy issues. The institute should expose the participants to relevant elements of U.S. economic history, the role of economic issues in American society, and current U.S. national/regional economic trends and perspectives.

Participants: The program should be designed for approximately 18 experienced university-level educators

who are currently teaching some aspect of the U.S. economic system, or plan to do so. Institute participants will come primarily from the fields of economics, social science, or business. Participants will be selected by USIS posts worldwide and will have high-level fluency in English.

Although some participants may have visited the U.S. previously, an initial orientation to the U.S. and the American campus should be an integral part of the program and should be held at the beginning of the program.

Program Design: The institute should be designed specifically for experienced foreign university-level educators and should not duplicate courses normally given by graduate departments for American graduate degree candidates. Although it is important that the topics and the reading for the institute be clearly organized, the institute should not have the structure of a lecture course or graduate seminar. Rather, it should facilitate the development of a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues and concepts. Total program length is six weeks with a minimum of five weeks devoted to the academic component at the host institution. The last week of the seminar should provide an escorted tour which includes three or four program days in Washington, DC to reinforce the academic component of the institute. A visit to one more additional site for scholarly purposes is optional.

Academic and Tour Component: The institute is offered for foreign university-level educators in the fields of economics, social science, or business or public policy who want to deepen and revitalize their understanding of the current functioning of the U.S. economic system and its relationship to important public policy issues. Following a brief orientation to the American campus and to the U.S., the institute should provide a brief review of the American economic system, an analysis of the structural changes now occurring, and a review of the major issues guiding economic analysis. The institute should address the relationship between the current U.S. economic system and the most important public policy issues in the U.S. (e.g., health care, trade, the environment, etc.). The institute should familiarize participants with current major sources of information about the U.S. economy, including macroeconomic and regional forecasts.

It is important that the academic program be clearly organized, and that its organization be broad enough to accommodate the diverse backgrounds

of the participants. During the course of the institute, participants should be encouraged to engage in individual scholarly and/or curriculum projects. The institution which conducts the program should be prepared to offer the level of scholarly resources and professional assistance necessary to give adequate support to such projects. It should also offer participants an overview of the state of the discipline of economics in the United States, and familiarize them with scholarly and institutional contacts and bibliographic information which will be useful to them in follow-up activities.

The tour component of the institute should be planned, arranged, and conducted by the program director and principal project staff and should be seen as an integral part of the program, complementing and reinforcing the academic component. It must include three or four program days in Washington, DC, and may include a visit to one more site. Either the Washington program or the optional third site should include visits to academic institutions, think tanks, or other relevant sites, and should be structured so that the participants are given a chance to pursue separate professional interests. Participants should meet with American economists, officials in financial institutions, and trade experts.

Programming in Washington should include a half-day wrap-up session at USIA. The grantee institution should consult closely with USIA in planning the Washington itinerary. Details of the academic and tour programs may be modified in consultation with USIA's Branch for the Study of the United States following grant award.

Proposed Budget: Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The total USIA-funded budget must not exceed \$145,300. USIA-funded administrative costs as defined in the application packet must not exceed \$43,648. Applications requesting more than \$43,648 for administrative costs, and/or more than \$145,300 for the total institute costs to USIA, or that do not allocate these costs consistently with the budget instructions will not be considered. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. Organizations submitting proposals are urged to cost share program and administrative costs to the greatest degree possible. Participant international travel will be covered by USIA, and should not be included in the budget submission.

Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E.

Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92-9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A-133, AICPA SOP 92-9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed

ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria: Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. The degree to which the content is representative of current expert knowledge in the field and is consistent with the requirements of the Bureau's legislative charter, meeting the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library and other research facilities; housing availability, and other institutional support important to a collegial setting, should be adequate to achieve the program goals.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for evaluation at the conclusion of the program by the institute by the grantee institution.

B. Adequacy of the provisions made for "multiplier effect," i.e. contact with non-faculty Americans and future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong on-site administrative and managerial capabilities (with specific discussion of how managerial and administrative-logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute and follow-on tour.

7. Cost-effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedure.

Notification: All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 14, 1993.

Barry Fulton,

Acting Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-25806 Filed 10-20-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 202

Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 52138, Wednesday, October 6, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) Tuesday, October 19, 1993.

CHANGE IN THE MEETING:

Closed Session

The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: October 19, 1993.

Frances M. Hart,

Executive Office, Executive Secretariat.

[FR Doc. 93-26090 Filed 10-19-93; 2:30 am]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Tuesday, October 19, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the probable failure of an insured depository institution; (2) matters relating to the Corporation's corporate activities; and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8),

(c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: October 19, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-26103 Filed 10-19-93; 3:25 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 93-25398.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 21, 1993, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Briefing on REGO.

DATE AND TIME: Tuesday, October 26, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 27, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This oral hearing will be open to the public.

MATTERS BEFORE THE COMMISSION:

Federal Funding of Presidential Nominating Conventions (11 C.F.R. Parts 107, 114, and 9008).

DATE AND TIME: Thursday, October 28, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1993-19: Charles F.C. Ruff on behalf of Friends of John Glenn.

Revised Final Ex Parte Communications Rules, with Statement of Basis and Purpose (continued from meeting of September 16, 1993).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93-26101 Filed 10-19-93; 3:24 pm]

BILLING CODE 6715-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATES: 9:00 a.m., Wednesday, October 27, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. FHLBank System Reports
 - A. Monthly Financial Report
 - B. Monthly Membership Report
 - C. Third Quarter 1993 CIP Report
 - D. Quarterly Office of Finance Report
2. Amendment of Affordable Housing Program and Community Support Requirements Regulations
3. Publication of the methodology to be used by the Finance Board in determining compliance with the Private Sector Adjustment Factor (PSAF) Pricing Requirements
4. Approval of three State Housing Finance Agencies as Eligible Nonmember Mortgagee Borrowers

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the September Board Minutes
2. Key Issues to be Addressed in Revisions to AHP Regulations
3. FHLBank Presidents' Compensation Plan - 1994 salary ranges, grade designations and merit increase guidelines
4. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(6) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,
Managing Director.

[FR Doc. 93-26021 Filed 10-19-93; 12:02 pm]

BILLING CODE 6725-01-P

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 27, 1993.

PLACE: Hearing Room One—800 North Capital St., NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the public:

1. Docket No. 92-31—*Service Contracts—Consideration of Comments on Proposed Rule.*

2. Docket No. 93-10—*Amendments to Rules Governing Rate Proceedings in the Domestic Offshore Trades—Consideration of Comments on Proposed Rule.*

Portion Closed to the public:

1. Docket No. 91-27—*American President Lines, Ltd. v. Cyprus Mines Corporation and Cyprus Minerals Company;* and

Docket No. 92-01—*American President Lines, Ltd. v. Cyprus Cooper Company and Cyprus Mineral Company—Consideration of the Record.*

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 93-26100 Filed 10-19-93; 2:55 pm]

BILLING CODE 6730-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 18, 1993.

A closed meeting will be held on Wednesday, October 20, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10)

and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 20, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Regulatory matter regarding financial institutions.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: October 15, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-26039 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 58, No. 202

Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

Correction

In notice document 93-21597 appearing on page 47139 in the issue of Tuesday, September 7, 1993, in the second column, in the table, the MM

Docket No. "93-421" should read "93-241".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-04; N-57773]

Realty Action: Exchange of Public Lands in Clark County, Nevada

Correction

In notice document 93-22015, beginning on page 47472 in the issue of Thursday, September 9, 1993 make the following correction:

On page 47473, in the first column, in the third paragraph, in the sixth line, "for" should read "from".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

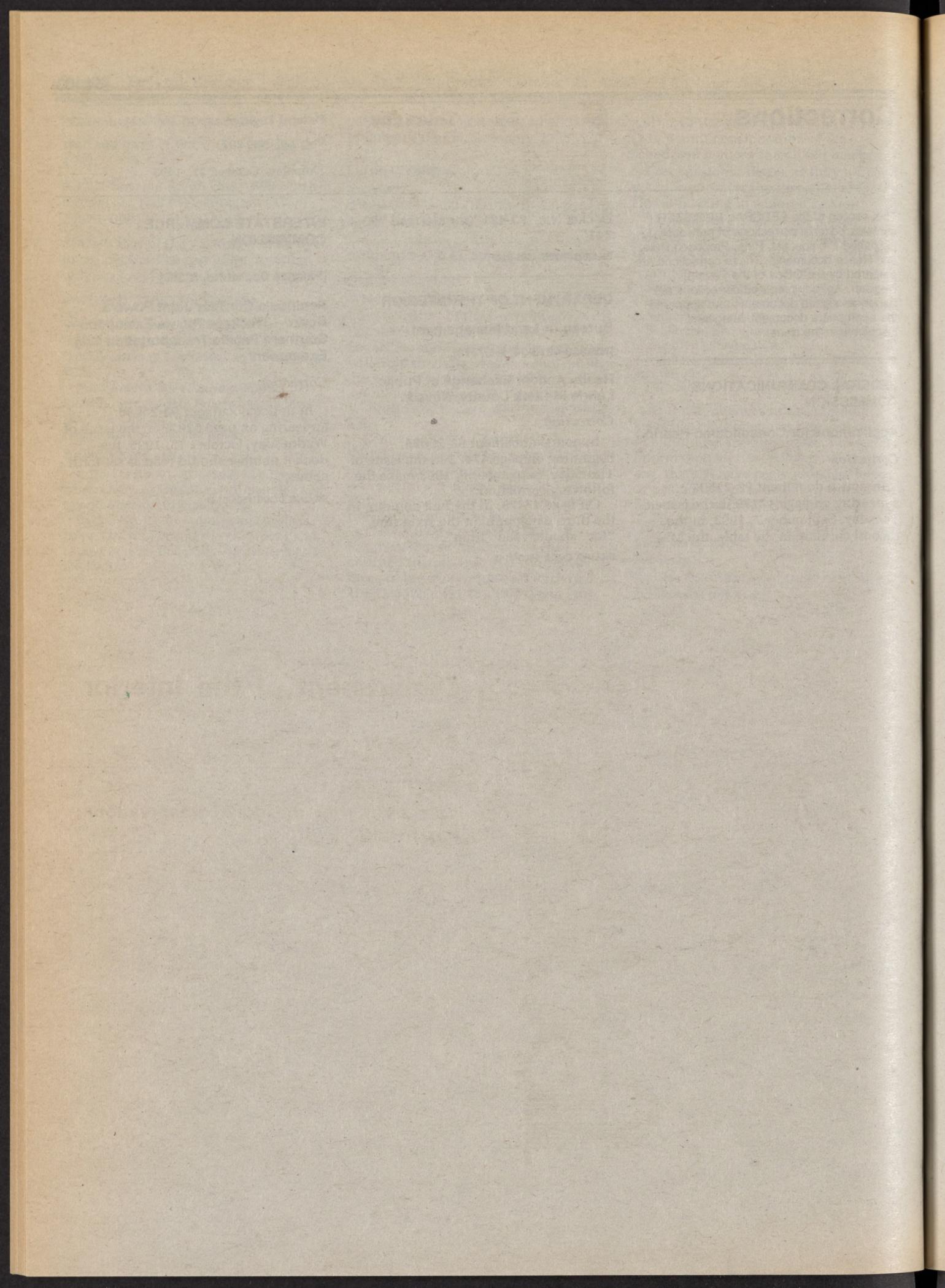
[Finance Docket No. 32359]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Exemption

Correction

In notice document 93-25086 appearing on page 52977 in the issue of Wednesday, October 13, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D



Thursday
October 21, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11

**Law and Order on Indian Reservations;
Final Rule**

RESERVED FOR THE
FEDERAL GOVERNMENT

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Part 11**

RIN: 1076-AA01

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is revising its regulations governing Courts of Indian Offenses to provide those courts with a complete and updated code of laws, and to clarify the jurisdiction of those courts and their relationship to tribal governments and the Department of the Interior.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT:

Chief, Branch of Judicial Services, Bureau of Indian Affairs, 1849 C St., NW., Mail Stop 2611-MIB, Washington, DC 20240-4001, telephone number (202) 208-4400.

SUPPLEMENTARY INFORMATION: This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Proposed regulations were published in the *Federal Register* on October 24, 1985 (50 FR 43235). The period of public comment closed on December 23, 1985. Numerous comments were received and reviewed. As a result, some changes were made as discussed in detail below.

Background and Need for Changes to Existing Regulations

Courts of Indian Offenses are established by the Department of the Interior in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction, but where the tribe has not established a tribal court to exercise that jurisdiction.

Although the rules of these courts are established and the judges appointed by the BIA, the regulations provide for substantial participation by tribal governments in their operation. For instance, the appointment and removal of judges is subject to tribal council action, and judges and tribal councils may supplement or supersede provisions in the regulations by adopting their own ordinances subject to the approval of the BIA.

While the United States Supreme Court has treated these courts as exercising tribal authority, *Williams v. Lee*, 358 U.S. 217, 222-223 (1959), it has expressly reserved the question of the

extent to which these courts are to be regarded as Federal instrumentalities. *United States v. Wheeler*, 435 U.S. 313, 327 n.26 (1978). The Department of the Interior must, however, define for administrative purposes the effect of the decisions of Courts of Indian Offenses on its own decision-making process. Accordingly, the new rules provide that decisions of Courts of Indian Offenses will be given the same weight in decision-making by the Department of the Interior that is accorded to decisions by tribal courts (courts established by purely tribal action).

To further implement that concept, the rule explicitly states that decisions of a Court of Indian Offenses are appealable only to the appellate division of the Court of Indian Offenses, and that appellate division decisions are not subject to administrative appeals within the Department of the Interior. Additionally, jurisdiction over federal and state officials is limited to the jurisdiction a tribal court would have over such officials.

The term "Indian country" is used instead of "reservation" in describing the jurisdiction of Courts of Indian Offenses for consistency with federal jurisdictional statutes.

The present regulations contain a very incomplete criminal code that does not cover many areas of the law that are usually covered in the laws of the state where the reservation is located. The present regulations also contain very sketchy provisions on criminal and civil procedure. The regulations do provide, however, for the local tribal government to enact ordinances that will be enforced in, but apply only to, the tribe's Indian country. Many tribes have taken advantage of this provision to supplement the existing regulations extensively.

These new regulations update the sections on criminal offenses, and essentially create new sections on criminal procedure, domestic relations, probate proceedings, appellate proceedings, and juvenile proceedings.

The criminal procedure sections are largely derived from the draft model code which was prepared pursuant to Title III of the 1968 Civil Rights Act, 82 Stat. 73, 77-78 (codified at 25 U.S.C. 1311-1312). The sections on criminal offenses are derived to a large extent from the Model Penal Code of the American Law Institute which has stimulated revision and codification of the substantive criminal law of the United States and of numerous states which have drawn upon the Model Code in their code revisions. However, some sections of the Model Code have been modified, and some eliminated

totally according to the needs and particular circumstances of Courts of Indian Offenses. The sections on criminal offenses are divided into six important areas of penal law: (1) Offenses involving injury or danger to the person such as assault, reckless endangering, threats, false imprisonment and criminal coercion; (2) sexual offenses; (3) the major offenses against property including reckless burning, criminal mischief, theft, forgery, and fraudulent practices; (4) offenses against the family such as endangering child welfare, and persistent non-support; (5) offenses against public administration including bribery, corrupt influence, perjury and other falsification; (6) offenses against public order such as disorderly conduct, riot, harassment, carrying concealed weapons, and others. In addition, it is provided that violations of duly enacted tribal ordinances are punishable as provided for in the ordinance.

Crimes under this part have been divided in three groups: Misdemeanors, petty misdemeanors, and violations. Felonies that are covered by the Major Crimes Act are excluded in order to avoid the possibility that someone who has committed a serious offense may be immunized from federal prosecution because of the prohibition against double jeopardy by a prosecution in a Court of Indian Offenses where the maximum penalty is limited by the Indian Civil Rights Act, 25 U.S.C. 1302(7).

The sections on gambling and game violations have been deleted because these violations are covered by § 11.449, violation of an approved tribal ordinance.

Sections on civil actions remain essentially unchanged from the proposal. However, § 11.503 provides for the applicability of the Federal Rules of Civil Procedure to Courts of Indian Offenses.

The sections on domestic relations have been expanded to provide better guidance to the courts in dealing with such matters. These sections are derived from the Uniform Marriage and Divorce Act, with minor modifications. Similarly, sections on probate proceedings have also been expanded. Sections on appellate proceedings have been expanded to provide basic appeal procedures which do not exist under the present code.

New sections creating a children's court have also been developed. These sections are divided into three parts: A general section dealing with definitions, personnel, and jurisdiction; sections dealing with juvenile offender procedure; and sections dealing with

minor-in-need-of-care procedure. These sections are based on the Model Children's Code that was developed by the American Indian Law Center in Albuquerque, New Mexico. These sections supplant 25 CFR 11.36 which is inadequate to address the role of the courts in dealing with juvenile problems.

Sections 11.6C, 11.7C, 11.20C, 11.22C, 11.24C, 11.26C, 11.29C, 11.31C, 11.32C, 11.34C, 11.36C, 11.50C, 11.60C, 11.63C, 11.64C, and 11.75C have been removed because the Crow Tribe has converted their Court of Indian Offense into a tribal court. For similar reasons, §§ 11.50ME, 11.55ME, 11.70ME, and §§ 11.88ME–11.98ME pertaining to the Menominee Tribe are also deleted. In addition, §§ 11.76H to 11.87H are deleted because these regulations pertain to the Hopi Tribe and should be enforced in the Hopi Tribal Court.

The Omaha Tribe is deleted from the listing of Courts of Indian Offenses under § 11.100(a) because it has converted their Court of Indian Offenses into a tribal court.

As is presently the case, courts will be established or abolished through the Federal rulemaking procedure by adding or deleting the name of a tribe from the list. The BIA will continue to assist tribes with Courts of Indian Offenses to develop their own codes and convert to tribal courts. It is the BIA's policy to encourage the replacement of Courts of Indian Offenses with tribal courts.

A new section has been added to make it clear that changes in the regulations do not affect criminal or civil liability for actions that occurred prior to the effective date of the change.

This final rule is not made effective until 30 days after its publication in the Federal Register.

Clarifications

The final rule includes various clarifications to the proposed rule which have been made principally in response to recommendations of commentators. Many of the clarifications address specific recommendations that certain text be revised to remove unclear or confusing language as noted in specific comments. With a few exceptions, these clarifications have not been individually discussed below, as the reasons for the clarifications become self-evident simply by comparing the text of the clarified rule with the corresponding proposed rule text. Certain clarifications have also been made to make the text consistent with the text of various substantive changes which are discussed below.

Analysis of Comments and Changes Made to Proposed Regulations

Section 11.100 Listing of Courts of Indian Offenses

Several comments questioned why the Osage Tribe was excluded from the list of tribes within the jurisdiction of the Court of Indian Offenses for tribes located in the former Oklahoma Territory. The Osage Tribe is not included because there has been no determination that a Court of Indian Offenses should be established to serve that tribe, nor has the Osage Tribal Council requested that a Court of Indian Offenses be set up to serve the Tribe.

Several comments suggested that § 11.100(a)(18) be amended to list those Oklahoma tribes which are served by the intertribal Court of Indian Offenses located there. This recommendation was adopted.

One comment recommended deletion of Secretarial approval of tribal ordinances under § 11.100(e). This recommendation was not adopted because Courts of Indian Offenses are Federal instrumentalities, and as such, the laws they enforce cannot be inconsistent with Federal law. Secretarial approval of tribal ordinances under § 11.100(e) is necessary to ensure such compliance.

Section 11.102 Criminal Jurisdiction; Limitation of Actions

Pursuant to a comment, this section was amended by adding a new subsection (b) to provide that a criminal prosecution is barred unless it is instituted by the filing of a complaint within five years of the commission of the offense. The five-year limitation period is similar in length to those found in federal statutes of limitations applicable to the prosecution of federal offenses. This section has been retitled to reflect this modification.

Section 11.103 Civil Jurisdiction; Limitation of Actions

As with the criminal jurisdiction section, this section has been amended to include a three-year limitation period within which to file a civil action. This limitation period is similar in length to those found in numerous state statutes of limitations applicable in civil actions. This section has been retitled accordingly.

In addition, several comments recommended that this section be amended to permit Courts of Indian Offenses to acquire jurisdiction over lawsuits by Indian plaintiffs against non-Indian defendants absent stipulation by the parties. This recommendation has not been adopted.

Although tribal court jurisdiction over non-Indians has been upheld by the U.S. Supreme Court under certain conditions, Courts of Indian offenses are not the equivalent of tribal courts, and the Federal Government is not disposed to unnecessarily expand the jurisdiction of its Courts of Indian Offenses.

Indian tribes served by Courts of Indian Offenses are authorized to create their own tribal court systems should they desire to assume additional jurisdiction.

Section 11.104 Jurisdictional Limitations

Several comments objected to the provision prohibiting Courts of Indian Offenses from adjudicating tribal government disputes absent a tribal council resolution or ordinance conferring such jurisdiction. They argue that these courts should be regarded as part of the tribal government and that resolution of such disputes by these courts is preferable to resolution by the BIA.

It is clear, however, that Courts of Indian Offenses are part of the Federal Government. *United States v. Red Lake Band of Chippewa Indians*, 827 F.2d 380, 383 (8th Cir. 1987), cert. denied, 108 S. Ct. 1109 (1988). Their involvement, without the consent of the tribal government, in tribal government disputes, is an unwarranted interference in tribal affairs. Unless the tribal government requests it, Court of Indian Offenses should not become a competing forum for those matters.

Although the BIA must occasionally decide who speaks for the tribe in order to carry out its responsibilities, it gives great weight to conclusions of the appropriate tribal forum when it does so. The use of the Court of Indian Offenses as such a forum would not affect the degree of involvement of other parts of the BIA in such matters.

One comment objected to the use of the term "tribal resolution" in §§ 11.104 (b) and (e) and recommended substituting the term "tribal ordinance". These provisions have been modified to provide tribes the option to choose between the two instruments.

Section 11.201 Appointment of Magistrates

Several comments objected to the role of the Assistant Secretary—Indian Affairs in appointing magistrates under § 11.201(a), or to his or her approval of judicial qualifications under § 11.201(e), and recommended only a tribal role in such decisions. These recommendations were not adopted because Courts of Indian Offenses are Federal instrumentalities and not tribal bodies.

Federal supervision is therefore mandatory.

Section 11.202 Removal of Magistrates

One comment objected to the role of the Assistant Secretary—Indian Affairs in removing magistrates, and recommended that the decision to remove a magistrate be left to the tribe or tribes affected. For the reasons stated above under § 11.201, this recommendation has not been adopted.

Section 11.203 Court Clerks

One comment suggested including a new subsection to provide for the disposition of moneys received on judgments. This recommendation has been adopted and incorporated as § 11.203(c).

Section 11.205 Standards Governing Appearance of Attorneys and Lay Counselors

Two comments objected to § 11.205(a) because it appears to conflict with a provision of the Indian Civil Rights Act (ICRA). Courts of Indian Offenses, however, are Federal instrumentalities and are bound not only by the ICRA, but by the requirements of the United States Constitution as well.

Section 11.206 Court Records

Two comments recommended adding a provision giving the magistrate discretion to seal certain court records. This recommendation has been adopted.

Section 11.207 Cooperation by Bureau of Indian Affairs Employees

In response to a comment, this section was expanded to provide for specific BIA assistance in the preparation and presentation of facts.

Section 11.300 Complaints

Some comments suggested that the signature of a complaining witness should not be required on a complaint, and that prosecutors should be allowed to file complaints independently. These recommendations were not adopted because it is felt that personal knowledge of the wrongful act must be a prerequisite to the filing of a complaint.

Section 11.301 Arrests

Several comments objected to § 11.301(b)(3) because it grants too much authority to an arresting officer, and is a rule that is not applicable to misdemeanors in most jurisdictions. This recommendation has been adopted and the subsection has been deleted.

Section 11.303 Notification of Rights at Time of Arrest

Several comments took exception to the requirement of notification of rights at the time of arrest, and suggested that a more appropriate time for such notification was prior to custodial interrogation. This recommendation has been adopted and the title of the section changed accordingly.

Section 11.308 Commitments

Several comments recommended amending this section to increase the time for detention from the proposed 36 hours which was deemed unnecessarily short. This recommendation has been adopted and the time limit has been increased to 72 hours.

Section 11.311 Subpoenas

Two comments recommended that the clerk of court also be permitted to sign subpoenas, as is the case in most court systems. This recommendation was adopted. In addition, a comment recommended modifying § 11.311(d) to set a definite age for a person with whom a subpoena may be left to make it unnecessary for police officers to ascertain what is a "suitable age". This recommendation has also been adopted and the age limit has been set at 18 years of age or older.

Section 11.312 Witness Fees

Pursuant to a comment, this section was amended to reflect that only subpoenaed fact witnesses are covered under § 11.312(a).

Section 11.313 Trial Procedure

Several comments objected to § 11.313(b) on the grounds that rules of evidence are necessary. This recommendation has been adopted, and the subsection amended to provide that Federal Rules of Evidence shall be applicable in Courts of Indian Offenses except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

Section 11.314 Jury Trials

Several comments objected to the requirement in § 11.314(d) that verdicts must be unanimous, citing the difficulty to obtain such verdicts. These comments merit consideration. However, in *Burch v. Louisiana*, 441 U.S. 130 (1979), the Supreme Court held that conviction by a non-unanimous six-person jury in a state criminal trial for a non-petty offense violates the rights of an accused to trial by jury guaranteed by the Sixth and Fourteenth Amendments. Although jury trials in Courts of Indian Offenses for offenses with potential

punishment of up to six months in jail are conducted, they cannot be compared to jury trials in state courts for non-petty offenses. However, the rationale of the Burch decision may still be applicable here because the IRCA requires jury trials for all offenses where imprisonment is sought. To resolve this problem, this section has been modified to provide for an eight-person jury, six of whom must concur to render a verdict.

One comment recommended the alternative use of an advisory jury composed of reservation elders. This recommendation has not been adopted because it is felt that the use of such juries depends on tribal custom and may be implemented by individual tribes through specific tribal ordinances.

Section 11.315 Sentencing

One comment recommended clarification of this section to make it clear that a criminal defendant may be sentence and/or fined for each offense for the violation of multiple offenses of the same section of the Code of Criminal Offenses. This recommendation has not been adopted because it is quite clear that such sentencing is permissible under the regulation.

Section 11.316 Probation

Two comments recommended increasing the potential probation period to one year for all crimes as a deterrent to criminal activity. This recommendation has been adopted.

Section 11.318 Extradition

One comment recommended that Courts of Indian Offenses only honor extradition requests of jurisdictions that honor theirs. This recommendation has not been adopted because it is too inflexible.

Section 11.400 Assault

One comment recommended defining the term "physical menace" to avoid proof problems. This recommendation has not been adopted because that term has been defined by case law.

Section 11.406 Criminal Coercion

One comment recommended deletion of proposed § 11.406(a)(3) because it is vague and over broad. This recommendation has been adopted.

Section 11.407 Sexual Assault

One comment recommended modification of § 11.407(b) to recognize the varied contexts within which sexual abuse may occur. This recommendation has been adopted and the subsection modified by expanding the definition of sexual contact.

Section 11.408 Indecent Exposure

One comment noted that it is difficult for a prosecutor to prove motivation and recommended deletion of the motivation clause under this section. This recommendation has been adopted.

Section 11.424 Neglect of Children

Pursuant to a comment, this section has been modified and retitled to include a new subsection on compulsory school attendance which was omitted from the proposed rule through oversight. The present regulations do contain such a provision.

Section 11.445 Driving Violations

Several comments asked that this provision be modified to provide that the offense of driving while intoxicated be included independently of the offense of reckless driving. This suggestion has been adopted.

In addition, numerous comments noted the absence of a traffic code and recommended that one be included in these regulations. This section has been redrafted to provide for the applicability of state traffic laws in the absence of a tribal traffic code. The section's title has been modified accordingly.

Section 11.450 Maximum Fines and Sentences of Imprisonment

Since the publication of the proposed rule, the ICRA, 25 U.S.C. 1302(7) has been amended by Pub. L. 99-570, Title IV, section 4217, Oct. 27, 1986, 100 Stat. 3207-146, increasing penalty and punishment for any one offense from a term of six months or a fine of \$500.00 to a term of one year and a fine of \$5,000.00. The rule was not modified to reflect the increased penalty and punishment authorized under the ICRA.

Section 11.502 Cost in Civil Actions

One comment noted that the provision authorizing the court to require a complainant to place a deposit with the clerk of the court to cover costs may restrict access to the courts by those with legitimate claims. This recommendation has not been adopted because the provision is not mandatory and affords the court flexibility to control the filing of frivolous complaints.

Section 11.504 Applicable Rules of Evidence

Pursuant to comments similar to those offered under § 11.313, this section has been amended to provide for the general applicability of the Federal Rules of Evidence.

Section 11.600 Marriages

One comment suggested increasing the time for recording traditional marriages with the clerk of the court. This recommendation has been adopted and § 11.600(b)(2) has been modified to increase the recordation time to thirty days.

One comment noted that tribal law should be referenced under § 11.600(c)(6) since some tribes may have their own health laws on the subject. This recommendation has been adopted.

One comment requested the inclusion of a form for marriage license applications. This recommendation has been adopted.

Section 11.603 Invalid or Prohibited Marriages

Two comments objected to this section on the grounds that it may contravene tribal customs or represent an attempt to legislate morality. This recommendation has not been adopted because Indian tribes are authorized to adopt tribal ordinances superseding these regulations if a conflict exists.

One comment noted that in *Israel v. Allen*, 577 P.2d 762 (1978), the Colorado Supreme Court struck down as unconstitutional a Colorado statute prohibiting marriages between adoptive brothers and sisters. Section 11.603(a)(3) has been amended to comply with this decision.

Section 11.606 Dissolution Proceedings

One comment objected to the need to verify the petition or response, and recommended instead that one party should be required to appear and testify as to the prima facie case for divorce even if the other party defaults. This recommendation has not been adopted because it is felt that verification secures the accountability of the petitioners or parties.

Section 11.608 Final Decree; Disposition of Property; Maintenance; Child Support; Custody

Pursuant to a comment, § 11.600(b)(1) has been amended to clarify that Courts of Indian Offenses do not have the authority to divide trust assets.

One comment recommended more comprehensive child support procedures to include wage withholding, reciprocal enforcement of child support orders, and collection of past-due support from Federal tax refunds. This recommendation has been adopted.

Section 11.609 Determination of Paternity and Support

Pursuant to a comment, this section has been modified to include a new subsection conferring standing to bring an action under this section to any person or agency who has provided support or assistance to a minor.

Section 11.803 Record on Appeal

The deadline for the clerk's certification of the record has been extended to 20 days pursuant to a comment that the proposed five-day period was unrealistically short.

Subpart G Probate Proceedings

One comment noted that the proposed regulations under this subpart were too restrictive and may infringe on some tribal customs of descent and distribution. This comment has not been adopted because the regulations defer to tribal customs in the area of descent and distribution.

Section 11.900 Definitions

Several comments recommended shortening the two-year period under the definition of the word "abandon" to one year because of permanency concerns. This recommendation has been adopted.

Several comments recommended including a definition of either "status offense" or "status offender", and amending the definition of "minor-in-need-of-care" to include a minor who has been committing status offenses. This recommendation has been adopted.

Section 11.904 Guardian Ad Litem

One comment suggested amending this section to provide for the appointment of a guardian ad litem where the parent, guardian, or custodian has been accused of abusing or neglecting the child. This recommendation has been adopted.

Section 11.906 Rights of Parties

One comment suggested amending this provision to require the court to appoint counsel for the minor where there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian. This recommendation has been adopted because the legal interests of the child often do not coincide with those of the parents.

Section 11.907 Transfer to Court of Indian Offenses

One comment complained of the relative short deadline in § 11.907(b)(1) in which to hold a transfer hearing to determine whether to transfer a case to the Court of Indian Offenses, as well as

other deadlines under this subpart, on the grounds that unrealistic or unnecessarily short deadlines are not in the interest of either the court or the minor. This recommendation has been adopted, and the following modifications were made to certain deadlines under this subpart: (1) The ten-day deadline in § 11.907(b)(1) has been extended to 30 days; (2) the ten-day deadline in § 11.1008 has been extended to 15 days; (3) the ten-day deadline in § 11.1011(a) has been extended to 15 days; (4) the ten-day deadline in § 11.1108(a) has been extended to 15 days; (5) the ten-day deadline in § 11.1111(a) has been extended to 15 days; and (6) the five-day deadline in § 11.1114(c) has been extended to 15 days.

Section 11.1000 Complaint

Pursuant to a comment, this section has been amended to permit the presenting officer to also file a complaint. Section 11.1100 has been similarly amended.

Section 11.1004 Detention and Shelter Care

Several comments recommended deleting the requirement that detention facilities be located on the reservation because of a potential lack of such facilities on some reservations. This recommendation has been adopted.

One comment recommended a clarification of what is "adequate supervision" under § 11.1004(b). This recommendation has been adopted and the term defined to mean that routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare. A similar provision was inserted under § 11.1104(b).

Section 11.1005 Preliminary Inquiry

One comment objected to the 24-hour deadline for preliminary inquiries in § 11.1005(a) as being too short. This recommendation has not been adopted because it is unreasonable to hold minors in detention without a prompt preliminary inquiry.

Section 11.1009 Summons

One comment suggested deleting the provision in § 11.1009(d) permitting delivery of a summons by publication to protect the child's privacy rights. This recommendation has been adopted. For the same reasons, the same provision has been deleted from § 11.1109 and § 11.1113(e)(4).

Section 11.1012 Dispositional Alternatives

One comment suggested that restitution by the minor be allowed as a dispositional alternative. This recommendation has been adopted.

Section 11.1104 Shelter Care

One comment objected to the provision in § 11.1104(b) permitting minors-in-need-of-care to be detained in the same facility as juvenile offenders. Although commendable, this recommendation is not adopted because of the relative shortage of such facilities on or near Indian reservations.

Section 11.1108 Date of Hearing

Pursuant to a comment, this provision has been modified to permit the refiling of a petition to protect the interest of the child.

Section 11.1112 Dispositional Alternatives

One comment recommended that only the presenting officer be permitted to recommend that termination proceedings be initiated, and that the magistrate should not be allowed to make such a recommendation and then proceed to determine it. This recommendation has been adopted and proposed § 11.1112(a)(6) has been deleted.

One comment urged that this section be modified to emphasize that efforts must be made to permit a minor to return or remain in his or her home. This recommendation has been adopted and the section modified accordingly.

One comment recommended adding a new subsection to provide for a permanency hearing within 18 months of the original placement. This recommendation has also been adopted.

Section 11.1114 Termination

One comment recommended a modification to this section to emphasize that reasonable efforts must be made to prevent removal of the minor from his or her home. This recommendation has been adopted.

One comment suggested that it should not be the function of the magistrate to review the petition until the parties have had an opportunity to be heard. This recommendation has been adopted and proposed § 11.1114(c) was deleted. The lettering of the subsections have been changed accordingly.

One comment objected to excusing the parents from testifying. The suggestion that parents should be forced to testify has not been adopted because the right against self-incrimination is not limited to criminal proceedings.

One comment noted that adoption procedures should be included in these regulations. Although this section provides that the Court of Indian Offenses must follow tribal adoption procedures, this section has been amended to provide that in the absence of such tribal procedures, state adoption procedures shall apply.

Evaluation and Certification

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. The intended effect of this rule is to update the sections under 25 CFR part 11 to provide Courts of Indian Offenses with a more complete set of rules. The proposed revision will not require additional staffing for these courts. It is not anticipated that this revision will have any effect on the annual caseload of these courts because it does not enlarge their jurisdiction, but mandates procedural guarantees. While it is true that some criminal provisions such as issuance of bad checks and defrauding secured creditors have been added, others, such as giving venereal disease to another and illicit cohabitation have been deleted, so that the net effect on caseload is going to be negligible. Courts of Indian Offenses are funded in their entirety by the Federal Government and do not receive additional funding from tribal governments. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of this revision, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed revision.

The Department of the Interior has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this final rule does not have significant takings implications.

The Department has also determined that this final rule does not have significant federalism effects.

The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076-0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the

Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076-0094), Office of Management and Budget, Washington, DC 20502.

Drafting Information

The primary author of this document is George T. Skibine, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

List of Subjects in

25 CFR Part 11

Courts, Indians—law, law enforcement and penalties.

25 CFR Part 12

Indians, Law enforcement, Police, and detention programs.

For the reasons given in the preamble, title 25, chapter I of the Code of Federal Regulations is amended as set forth below.

§§ 11.301–11.306 [Redesignation as 12.100–12.105 in New Part 12]

1. Part 11 is amended by redesignating §§ 11.301 through 11.306 as §§ 12.100 through 12.105 of a new Part 12, The Indian Police.

2. Part 11 is revised to read as follows:

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Subpart A—Application; Jurisdiction

Sec.

- 11.100 Listing of Courts of Indian Offenses.
- 11.101 Prospective application of regulations.
- 11.102 Criminal jurisdiction; limitation of actions.
- 11.103 Civil jurisdiction; limitation of actions.
- 11.104 Jurisdictional limitations.

Subpart B—Courts of Indian Offenses; Personnel; Administration

- 11.200 Composition of court.
- 11.201 Appointment of magistrates.
- 11.202 Removal of magistrates.
- 11.203 Court clerks.
- 11.204 Prosecutors.

- 11.205 Standard governing appearance of attorneys and lay counselors.
- 11.206 Court records.
- 11.207 Cooperation of Bureau of Indian Affairs employees.
- 11.208 Payment of judgments from individual Indian money accounts.
- 11.209 Disposition of fines.

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- 11.301 Arrests.
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- 11.303 Notification of rights prior to custodial interrogation.
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Subpart D—Criminal Offenses

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- 11.401 Recklessly endangering another person.
- 11.402 Terroristic threats.
- 11.403 Unlawful restraint.
- 11.404 False imprisonment.
- 11.405 Interference with custody.
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- 11.409 Reckless burning or exploding.
- 11.410 Criminal mischief.
- 11.411 Criminal trespass.
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- 11.415 Fraud.
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- 11.417 Extortion.
- 11.418 Misbranding.
- 11.419 Unauthorized use of automobiles and other vehicles.
- 11.420 Tampering with records.
- 11.421 Bad checks.
- 11.422 Unauthorized use of credit cards.
- 11.423 Defrauding secured creditors.
- 11.424 Neglect of children.
- 11.425 Persistent non-support.
- 11.426 Bribery.
- 11.427 Threats and other improper influence in official and political matters.
- 11.428 Retaliation for past official action.
- 11.429 Perjury.
- 11.430 False alarms.
- 11.431 False reports.
- 11.432 Impersonating a public servant.
- 11.433 Disobedience to lawful order of court.
- 11.434 Resisting arrest.
- 11.435 Obstructing justice.
- 11.436 Escape.
- 11.437 Bail jumping.
- 11.438 Flight to avoid prosecution or judicial process.

- 11.439 Witness tampering.
- 11.440 Tampering with or fabricating physical evidence.
- 11.441 Disorderly conduct.
- 11.442 Riot; Failure to disperse.
- 11.443 Harassment.
- 11.444 Carrying concealed weapons.
- 11.445 Driving violations.
- 11.446 Cruelty to animals.
- 11.447 Maintaining a public nuisance.
- 11.448 Abuse of office.
- 11.449 Violation of an approved tribal ordinance.
- 11.450 Maximum fines and sentences of imprisonment.

Subpart E—Civil Actions

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Subpart G—Probate Proceedings

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- 11.1115 Information collection.

Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

§ 11.100 Listing of Courts of Indian Offenses.

(a) Except as otherwise provided in this title, the regulations under this part are applicable to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

- (1) Flandreau Santee Sioux Tribe (South Dakota).
- (2) Yankton Sioux Tribe (South Dakota).
- (3) Shoshone and Arapahoe Tribes of the Wind River Reservation (Wyoming).
- (4) Bois Forte Band of the Minnesota Chippewa Tribe (Minnesota).
- (5) Red Lake Band of Chippewa Indians (Minnesota).
- (6) Cocopah Tribe (Arizona).
- (7) Kaibab Band of Paiute Indians (Arizona).
- (8) Paiute Shoshone Tribe of the Fallon Reservation and Colony (Nevada).

- (9) Confederated Tribes of the Goshute Reservation (Nevada).
- (10) Lovelock Paiute Tribe (Nevada).
- (11) Te-Moak Band of Western Shoshone Indians (Nevada).
- (12) Yomba Shoshone Tribe (Nevada).
- (13) Duckwater Shoshone Tribe (Nevada).
- (14) Kootenai Tribe (Idaho).
- (15) Shoalwater Bay Tribe (Washington).
- (16) Eastern Band of Cherokee Indians (North Carolina).
- (17) Mississippi Band of Choctaw Indians (Mississippi).
- (18) For the following tribes located in the former Oklahoma Territory (Oklahoma):

Absentee Shawnee Tribe of Indians of Oklahoma
 Apache Tribe of Oklahoma
 Caddo Tribe of Oklahoma
 Cheyenne-Arapaho Tribes of Oklahoma
 Citizen Band of Potawatomi Indians of Oklahoma
 Comanche Tribe of Oklahoma (except Comanche Children's Court)
 Delaware Tribe of Western Oklahoma
 Fort Sill Apache Tribe of Oklahoma
 Kaw Tribe of Oklahoma
 Iowa Tribe of Oklahoma
 Kickapoo Tribe of Oklahoma
 Kiowa Tribe of Oklahoma
 Otoe-Missouria Tribe of Oklahoma
 Pawnee Tribe of Oklahoma
 Tonkawa Tribe of Oklahoma
 Wichita and Affiliated Tribes of Oklahoma

(19) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California) (Jurisdiction limited to special fishing regulations).

(20) Louisiana Area (Includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part; *Provided* that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**).

(b) It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

(c) The regulations in this part shall continue to apply to tribes listed under § 11.100(a) until a law and order code which includes the establishment of a court system has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents, has become effective, and the Assistant Secretary—Indian Affairs or his or her designee has received a

valid tribal enactment identifying the effective date of the code's implementation, and the name of the tribe has been deleted from the listing of Courts of Indian Offenses under § 11.100(a).

(d) For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services from the BIA, and any other individual who is an "Indian" for purposes of 18 U.S.C. 1152–1153.

(e) The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

(f) Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

§ 11.101 Prospective application of regulations.

Civil and criminal causes of actions arising prior to the effective date of these regulations shall not abate but shall be determined in accordance with the regulations in effect at the time the cause arose.

§ 11.102 Criminal jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five years after such offense shall have been committed.

§ 11.103 Civil jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any civil action arising within the territorial jurisdiction of the court in which the defendant is an Indian, and of all other suits between Indians and non-Indians which are brought before the court by stipulation of the parties.

(b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

§ 11.104 Jurisdictional limitations.

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses.

(d) The Department of the Interior will accord the same weight to decisions of a Court of Indian Offenses that it accords to decisions of a tribal court.

(e) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

§ 11.200 Composition of court.

(a) Each court shall be composed of a trial division and an appellate division.

(b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.

(c) Appeals shall be heard by a panel of three magistrates who were not involved in the trial of the case.

(d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

§ 11.201 Appointment of magistrates.

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses.

(b) Each magistrate shall hold office for a period of four years, unless sooner

removed for cause or by reason of the abolition of the office, but is eligible for reappointment.

(c) No person is eligible to serve as a magistrate of a Court of Indian Offenses who has ever been convicted of a felony or, within one year of the date of service or application, of a misdemeanor.

(d) No magistrate shall be qualified to act as such wherein he or she has any direct conflicting interest, real or apparent.

(e) A tribal governing body may set forth such other qualifications for magistrates of the Court of Indian Offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.

(f) A tribal governing body may also recommend requirements for the training of magistrates of the Court of Indian Offenses to the Assistant Secretary—Indian Affairs.

§ 11.202 Removal of magistrates.

Any magistrate of a Court of Indian Offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body, and, in the case of multi-tribal courts, upon the recommendation of a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses, or pursuant to his or her own discretion.

§ 11.203 Court clerks.

(a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the chief magistrate shall appoint a clerk of court for the Court of Indian Offenses within his or her jurisdiction, subject to the superintendent's approval.

(b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall also attend and keep a record of all proceedings of the court and manage all monies received by the court.

(c) The clerk of court shall forward any monies received on judgments due to the person, agency, or corporation to which entitled, within 30 days unless directed otherwise by a magistrate of the Court of Indian Offenses.

§ 11.204 Prosecutors.

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court

has jurisdiction, the superintendent shall appoint a prosecutor for each Court of Indian Offenses within his or her jurisdiction.

§ 11.205 Standards governing appearance of attorneys and lay counselors.

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the Court of Indian Offenses of professional attorneys and lay counselors.

§ 11.206 Court records.

(a) Each Court of Indian Offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearing or trial, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, and for cases whose records have been sealed by the court, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the Court of Indian Offenses is located and shall be protected in accordance with 44 U.S.C. 3102.

§ 11.207 Cooperation by Bureau of Indian Affairs Employees.

(a) No employee of the BIA may obstruct, interfere with, or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the BIA shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

§ 11.208 Payment of judgments from individual Indian money accounts.

(a) Any Court of Indian Offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's

account. The court shall certify the record of the case to the superintendent. If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.

(b) A judgment of a Court of Indian Offenses shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of Indian Offenses to distribute decedents' estates.

§ 11.209 Disposition of fines.

All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon order of the clerk of the court signed by a judge of the court for the payment of specified expenses. The disbursing agent and the clerk of the court shall keep an account of all such deposits and withdrawals available for public inspection.

Subpart C—Criminal Procedure

§ 11.300 Complaints.

(a) A complaint is a written statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the court by a law enforcement officer and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to

determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

§ 11.301 Arrests.

(a) Arrest is the taking of a person into police custody in order that he or she may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that the person arrested has committed an offense.

§ 11.302 Arrest warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complainant.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

§ 11.303 Notification of rights prior to custodial interrogation.

Prior to custodial interrogation, the suspect shall be advised of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her.

§ 11.304 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect, a law enforcement

officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court of Indian Offenses at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his or her usual residence or place of business with any person 18 years of age or older who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall file with the record of the case a form indicating when the summons was served.

§ 11.305 Search warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located within the Indian country over which the court has jurisdiction.

(b) No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

(c) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the magistrate who issued it.

(d) Warrants may be executed only by a BIA or tribal police officer or other official commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the Court of Indian Offenses within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

§ 11.306 Search without a warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) With the voluntary consent of the person being searched; or

(c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

§ 11.307 Disposition of seized property.

(a) The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court of Indian Offenses to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court of Indian Offenses.

§ 11.308 Commitments.

No person may be detained, jailed or imprisoned under the regulations of this part for longer than 48 hours unless the Court of Indian Offenses issues a commitment bearing the signature of a magistrate. A temporary commitment shall be issued for each person held before trial. A final commitment shall be issued for each person sentenced to jail after trial.

§ 11.309 Arraignments.

(a) Arraignment is the bringing of an accused before the court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of court.

(c) Before an accused is required to plead to any criminal charges the magistrate shall:

(1) Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the

accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) The magistrate shall call upon the defendant to plead to the charge:

(1) If the accused pleads "not guilty" to the charge, the magistrate shall then inform the accused of the trial date and set conditions for release prior to trial.

(2) If the accused pleads "guilty" to the charge, the magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his or her behalf.

(3) The court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

§ 11.310 Bail.

(a) Each person charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;

(2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance;

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;

(4) Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule;

(5) Release after execution of a bail agreement by two responsible members of the community; or

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the court.

(c) A convicted person may be released from custody pending appeal

on such conditions as the magistrate determines will reasonably assure the appearance of the accused unless the magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.

(d) The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

§ 11.311 Subpoenas.

(a) Upon request of any party, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of the court may act on behalf of the court and issue subpoenas which have been signed either by the clerk of the court or by a magistrate of the Court of Indian Offenses and which are to be served within Indian country over which the Court of Indian Offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate of the Court of Indian Offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court of Indian Offenses has jurisdiction shall be issued personally by a magistrate of the Court of Indian Offenses.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench

warrant may be issued for his or her arrest.

§ 11.312 Witness fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.313 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

§ 11.314 Jury trials.

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of eight Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Court of Indian Offenses under its general rulemaking authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law

and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Six out of the eight jurors must concur to render a verdict.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the Federal Government of jurors and witnesses. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars (\$500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in paragraph (a) of this section, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him or her in contempt of court and imprison him or her accordingly.

§ 11.316 Probation.

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Indian Offenses may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed

appropriate by the court, provided that the period of probation shall not exceed one year.

(b) Any person who violates the terms of his or her probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.317 Parole.

(a) Any person sentenced by the court of detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court of Indian Offenses.

(b) Any person who violates the conditions of his or her parole may be required by the court to serve the whole original sentence, provided that such revocation or parole shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.318 Extradition.

Any Court of Indian Offenses may order delivery to the proper state, tribal or BIA law enforcement authorities of any person found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a hearing before the court.

Subpart D—Criminal Offenses

§ 11.400 Assault.

(a) A person is guilty of assault if he or she:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 11.401 Recklessly endangering another person.

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person

knowingly points a firearm at or in the direction of another person, whether or not the actor believed the firearm to be loaded.

§ 11.402 Terroristic threats.

A person is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

§ 11.403 Unlawful restraint.

A person commits a misdemeanor if he or she knowingly:

(a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or

(b) Holds another in a condition of involuntary servitude.

§ 11.404 False imprisonment.

A person commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

§ 11.405 Interference with custody.

(a) *Custody of children.* A person commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) *Custody of committed person.* A person is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she does not have the privilege to do so. *Committed person* means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

§ 11.406 Criminal coercion.

(a) A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's freedom of action to his or her detriment, he or she threatens to:

(1) Commit any criminal offense; or
(2) Accuse anyone of a criminal offense; or

(3) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

§ 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assault as a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature or his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than ten years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

§ 11.408 Indecent exposure.

A person commits a misdemeanor if he or she exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm.

§ 11.409 Reckless burning or exploding.

A person commits a misdemeanor if he or she purposely starts a fire or causes an explosion, whether on his or her property or another's, and thereby recklessly:

(a) Places another person in danger of death or bodily injury; or

(b) Places a building or occupied structure of another in danger of damage or destruction.

§ 11.410 Criminal mischief.

(a) A person is guilty of criminal mischief if he or she:

(1) Damages tangible property of another purposely, recklessly, or by

negligence in the employment of fire, explosives, or other dangerous means; or

(2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(3) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(b) Criminal mischief is a misdemeanor if the actor purposely causes pecuniary loss in excess of \$100, or a petty misdemeanor if he or she purposely or recklessly causes pecuniary loss in excess of \$25. Otherwise, criminal mischief is a violation.

§ 11.411 Criminal trespass.

(a) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

(c) An offense under this section constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.

§ 11.412 Theft.

A person who, without permission of the owner, shall take, shoplift, possess or exercise unlawful control over movable property not his or her own or under his or her control with the purpose to deprive the owner thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or herself or another not entitled thereto shall be guilty of theft, a misdemeanor.

§ 11.413 Receiving stolen property.

A person is guilty of receiving stolen property, a misdemeanor, if he or she purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that

it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. *Receiving* means acquiring possession, control or title, or lending on the security of the property.

§ 11.414 Embezzlement.

A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, shall be guilty of embezzlement, a misdemeanor.

§ 11.415 Fraud.

A person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property, shall be guilty of fraud, a misdemeanor.

§ 11.416 Forgery.

(a) A person is guilty of forgery, a misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he or she is facilitating fraud or injury to be perpetrated by anyone, he or she:

(1) Alters, makes, completes, authenticates, issues or transfers any writing of another without his or her authority; or

(2) Utters any writing which he or she knows to be forged in a manner above specified.

(b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

§ 11.417 Extortion.

A person who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be guilty of extortion, a misdemeanor.

§ 11.418 Misbranding.

A person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be guilty of a misdemeanor.

§ 11.419 Unauthorized use of automobiles and other vehicles.

A person commits a misdemeanor if he or she operates another person's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner

would have consented to the operation had he or she known of it.

§ 11.420 Tampering with records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

§ 11.421 Bad checks.

(a) A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor.

(b) For the purposes of this section, an issuer is presumed to know that the check or order would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

§ 11.422 Unauthorized use of credit cards.

(a) A person commits a misdemeanor if he or she uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or cancelled; or

(3) For any other reason his or her use of the card is unauthorized by the issuer.

(b) *Credit card* means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

§ 11.423 Defrauding secured creditors.

A person commits a misdemeanor if he or she destroys, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder that interest.

§ 11.424 Neglect of children.

(a) A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he or she knowingly endangers the child's welfare by violating a duty of care, protection or support.

(b) A parent, guardian, or other person supervising the welfare of a child under 18 commits a violation if he or she neglects or refuses to send the child to school.

§ 11.425 Persistent non-support.

A person commits a misdemeanor if he or she persistently fails to provide

support which he or she can provide and which he or she knows he or she is legally obliged to provide to a spouse, child or other dependent.

§ 11.426 Bribery.

(a) A person is guilty of bribery, a misdemeanor, if he or she offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.427 Threats and other improper influence in official and political matters.

(a) A person commits a misdemeanor if he or she:

(1) Threatens unlawful harm to any person with purpose to influence his or her decision, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.428 Retaliation for past official action.

A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

§ 11.429 Perjury.

A person is guilty of perjury, a misdemeanor, if in any official proceeding he or she makes a false

statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(a) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(b) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

§ 11.430 False alarms.

A person who knowingly causes a false alarm of fire or other emergency to be transmitted to, or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.

§ 11.431 False reports.

(a) A person who knowingly gives false information to any law enforcement officer with the purpose to implicate another commits a misdemeanor.

(b) A person commits a petty misdemeanor if he or she:

(1) Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretends to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

§ 11.432 Impersonating a public servant.

A person commits a misdemeanor if he or she falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice.

§ 11.433 Disobedience to lawful order of court.

A person who willfully disobeys any order, subpoena, summons, warrant or command duly issued, made or given by any Court of Indian Offenses or any officer thereof is guilty of a misdemeanor.

§ 11.434 Resisting arrest.

A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, he or she creates a substantial risk of bodily injury

to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

§ 11.435 Obstructing justice.

A person commits a misdemeanor if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, he or she harbors or conceals the other, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.

§ 11.436 Escape.

A person is guilty of the offense of escape, a misdemeanor, if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

§ 11.437 Bail jumping.

A person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time or place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.

§ 11.438 Flight to avoid prosecution or judicial process.

A person who shall absent himself or herself from the Indian country over which the Court of Indian Offenses exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a misdemeanor.

§ 11.439 Witness tampering.

(a) A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

- (1) Testify or inform falsely; or
- (2) Withhold any testimony, information, document or thing; or
- (3) Elude legal process summoning him or her to supply evidence; or
- (4) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(b) A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

§ 11.440 Tampering with or fabricating physical evidence.

A person commits a misdemeanor if, believing that an official proceeding or

investigation is pending or about to be instituted, he or she:

(a) Alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) Makes, presents or uses any record, document or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

§ 11.441 Disorderly conduct.

(a) A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he or she:

(1) Engages in fighting or threatening, or in violent or tumultuous behavior;

(2) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(b) *Public* means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he or she persists in disorderly conduct after reasonable warning or request to desist. Otherwise, disorderly conduct is a violation.

§ 11.442 Riot; failure to disperse.

(a) A person is guilty of riot, a misdemeanor, if he or she participates with two or more others in a course of disorderly conduct:

(1) With purpose to commit or facilitate the commission of a felony or misdemeanor; or

(2) With purpose to prevent or coerce official action; or

(3) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, a law enforcement officer may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

§ 11.443 Harassment.

A person commits a petty misdemeanor if, with purpose to harass another, he or she:

(a) Makes a telephone call without purpose or legitimate communication; or

(b) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or

(c) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or

(d) Subjects another to an offensive touching; or

(e) Engages in any other course of alarming conduct serving no legitimate purpose.

§ 11.444 Carrying concealed weapons.

A person who goes about in public places armed with a dangerous weapon concealed upon his or her person is guilty of a misdemeanor unless he or she has a permit to do so signed by a magistrate of the Court of Indian Offenses.

§ 11.445 Driving violations.

(a) A person who shall operate any vehicle in a manner dangerous to the public safety is guilty of reckless driving, a petty misdemeanor, unless it is committed while under the influence of alcohol, in which case it is a misdemeanor.

(b) A person who shall drive, operate or be in physical control of any motor vehicle when his or her alcohol concentration is 0.10 or more shall be guilty of driving while intoxicated, a misdemeanor.

(c) Any person who drives, operates, or is in physical control of a motor vehicle within the Indian country under the jurisdiction of a Court of Indian Offenses consents to a chemical test of his or her blood, breath, or urine for the purpose of determining the presence of alcohol, to be administered at the direction of a law enforcement officer. The test may be required when the officer has reasonable cause to believe that a person is driving while intoxicated, and the person has either been lawfully placed under arrest for a violation of this section, or has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death.

(d) In the absence of an applicable tribal traffic code, the provisions of state traffic laws applicable in the state where a Court of Indian Offenses is located shall apply to the operation of motor vehicles within the Indian country under the jurisdiction of the Court of Indian Offenses with the exception that

any person found guilty of violating such laws shall, in lieu of the penalties provided under state law, be sentenced according to the standards found in § 11.450 depending on the nature of the traffic code violation, and may be deprived of the right to operate any motor vehicle for a period not to exceed 6 months.

§ 11.446 Cruelty to animals.

A person commits a misdemeanor if he or she purposely or recklessly:

(a) Subjects any animal in his or her custody to cruel neglect; or

(b) Subjects any animal to cruel mistreatment; or

(c) Kills or injures any animal belonging to another without legal privilege or consent of the owner.

(d) Causes one animal to fight with another.

§ 11.447 Maintaining a public nuisance.

A person who permits his or her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his or her neighbors, is guilty of a violation.

§ 11.448 Abuse of office.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his or her conduct is illegal, he or she:

(a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

§ 11.449 Violation of an approved tribal ordinance.

A person who violates the terms of any tribal ordinance duly enacted by the governing body of the tribe occupying the Indian country under the jurisdiction of the Court of Indian Offenses and approved by the Assistant Secretary—Indian Affairs or his or her designee, is guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

§ 11.450 Maximum fines and sentences of imprisonment.

(a) A person convicted of an offense under this code may be sentenced as follows:

(1) If the offense is a misdemeanor, to a term of imprisonment not to exceed six months or to a fine not to exceed \$500.00, or both;

(2) If the offense is a petty misdemeanor, to a term of

imprisonment not to exceed three months or to a fine not to exceed \$250.00, or both;

(3) If the offense is a violation, to a term of imprisonment not to exceed one month or to a fine not to exceed \$100.00, or both;

(b) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

Subpart E—Civil Actions**§ 11.500 Law applicable to civil actions.**

(a) In all civil cases the Court of Indian Offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe occupying the area of Indian country over which the court has jurisdiction, not prohibited by Federal laws.

(b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counselors familiar with these customs and usages.

(c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of Indian Offenses according to the law of the State in which the matter in dispute lies.

§ 11.501 Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party, including injunctive relief and declaratory judgments.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he or she has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as a result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he or she has suffered.

(e) No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his or her defense.

§ 11.502 Costs in civil actions.

(a) The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

(b) In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

§ 11.503 Applicable civil procedure.

The procedure to be followed in civil cases shall be the Federal Rules of Civil Procedure applicable to United States district courts, except insofar as such procedures are superseded by order of the Court of Indian Offenses or by the existence of inconsistent tribal rules of procedure.

§ 11.504 Applicable rules of evidence.

Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the Court of Indian Offenses, or by the existence of inconsistent tribal rules of evidence.

Supart F—Domestic Relations**§ 11.600 Marriages.**

(a) A magistrate of the Court of Indian Offenses shall have the authority to perform marriages.

(b) A valid marriage shall be constituted by:

(1) The issuance of a marriage license by the Court of Indian Offenses and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of the court; or

(2) The recording of a tribal custom marriage with the Court of Indian Offenses within 30 days of the tribal custom marriage ceremony by the signing by both parties of a marriage register maintained by the clerk of the court.

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

§ 11.601 Marriage licenses.

A marriage license shall be issued by the clerk of the court in the absence of any showing that the proposed marriage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of parent or his or her legal guardian.

§ 11.602 Solemnization.

(a) In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he or she shall file with the clerk of the court certification thereof within thirty (30) days of the solemnization.

(b) Upon receipt of the marriage certificate, the clerk of the court shall register the marriage.

§ 11.603 Invalid or prohibited marriages.

(a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood;

(3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom;

(4) A marriage prohibited by custom and usage of the tribe.

(b) Children born of a prohibited marriage are legitimate.

§ 11.604 Declaration of invalidity.

(a) The Court of Indian Offenses shall enter a decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage, either because of mental

incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or

(2) A party was induced to enter into a marriage by fraud or duress; or

(3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other party did not know of the incapacity; or

(4) The marriage is prohibited under § 11.603.

(b) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent.

§ 11.605 Dissolution.

(a) The Court of Indian Offenses shall enter a decree of dissolution of marriage if:

(1) The court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage;

(2) The court finds that either party, at the time the action was commenced, was domiciled within the Indian country under the jurisdiction of the court, and that the domicile has been maintained for 90 days next preceding the making of the findings; and

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court of Indian Offenses shall grant the decree in that form unless the other party objects.

§ 11.606 Dissolution proceedings.

(a) Either or both parties to the marriage may initiate dissolution proceedings.

(b) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rule of civil procedure and within thirty days after the date of service may file a verified response.

(c) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(1) The age, occupation, and length of residence within the Indian country

under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

§ 11.607 Temporary orders and temporary injunctions.

(a) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by an independent motion accompanied by an affidavit, either party may request the Court of Indian Offenses to issue a temporary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) Enjoining a party from removing a child from the jurisdiction of the court; and

(5) Providing other injunctive relief proper in the circumstances.

(c) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(d) A response may be filed within 20 days after service of notice of a motion or at the time specified in the temporary restraining order.

(e) On the basis of the showing made, the Court of Indian Offenses may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

(f) A temporary order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in a proceeding;

(2) May be revoked or modified before the final decree as deemed necessary by the court;

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

§ 11.608 Final decree; disposition of property; maintenance; child support; custody.

(a) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

(b) The Court of Indian Offenses shall have the power to impose judgment as follows in dissolution or separation proceedings:

(1) Apportion or assign between the parties the non-trust property and non-trust assets belonging to either or both and whenever acquired, and whether the title thereto is in the name of the husband or wife or both;

(2) Grant a maintenance order for either spouse in amounts and for periods of time the court deems just;

(3) Order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support, without regard to marital misconduct, after considering all relevant factors. In addition:

(i) When a support order is issued by a Court of Indian Offenses, the order may provide that a portion of an absent parent's wages be withheld to comply with the order on the earliest of the following dates: When an amount equal to one month's support becomes overdue; when the absent parent requests withholding; or at such time as the Court of Indian Offenses selects. The amount to be withheld may include an amount to be applied toward liquidation of any overdue support.

(ii) If the Court of Indian Offenses finds that an absent parent who has been ordered to pay child support is now residing within the jurisdiction of another Court of Indian Offenses, an Indian tribal court, or a state court, it shall petition such court for reciprocal

enforcement and provide it with a copy of the support order.

(iii) If the Court of Indian Offenses receives a petition from another Court of Indian Offenses, an Indian tribal court or a state court, it shall take necessary steps to determine paternity, establish an order for child support, register a foreign child support order or enforce orders as requested in the petition.

(iv) The Court of Indian Offenses shall assist a state in the enforcement and collection of past-due support from Federal tax refunds of absent parents living within the Indian country over which the court has jurisdiction.

(v) Any person or agency who has provided support or assistance to a child under 18 years of age shall be a proper person to bring an action under this section and to recover judgment in an amount equal to such past-paid support or assistance, including costs of bringing the action.

(4) Make child custody determinations in accordance with the best interest of the child.

(5) Restore the maiden name of the wife.

§ 11.609 Determination of paternity and support.

The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Court of Indian Offenses or by the Department of the Interior.

§ 11.610 Appointment of guardians.

The court shall have the jurisdiction to appoint or remove legal guardians for minors and for persons who are incapable of managing their own affairs under terms and conditions to be prescribed by the court.

§ 11.611 Change of name.

The Court of Indian Offenses shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents of any minor, if at least one parent is Indian. Any order issued by the court for a change of name shall be kept as a permanent record and copies shall be filed with the agency superintendent, the governing body of the tribe occupying the Indian country under the jurisdiction of the court, and any appropriate agency of the State in which the court is located.

Subpart G—Probate Proceedings**§ 11.700 Probate jurisdiction.**

The Court of Indian Offenses shall have jurisdiction to administer in probate the estate of a deceased Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court to the extent that such estate consists of property which does not come within the jurisdiction of the Secretary of the Interior.

§ 11.701 Duty to present will for probate.

Any custodian of a will shall deliver the same to the Court of Indian Offenses within 30 days after receipt of information that the maker thereof is deceased. Any custodian who fails to do so shall be liable for damages sustained by any person injured thereby.

§ 11.702 Proving and admitting will.

(a) Upon initiating the probate of an estate, the will of the decedent shall be filed with the court. Such will may be proven and admitted to probate by filing an affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will. If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony that the signature of the testator is genuine.

(b) At any time within 90 days after a will has been admitted to probate, any person having an interest in the decedent's estate may contest the validity of such will. In the event of such contest, a hearing shall be held to determine the validity of such will.

(c) Upon considering all relevant information concerning the will, the Court of Indian Offenses shall enter an order affirming the admission of such will to probate, or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died intestate.

§ 11.703 Petition and order to probate estate.

(a) Any person having an interest in the administration of an estate which is subject to the jurisdiction of the court may file a written petition with the court requesting that such estate be administered in probate.

(b) The Court of Indian Offenses shall enter an order directing that the estate be probated upon finding that the decedent was an Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court other

than trust or other restricted property, that the decedent left an estate subject to the jurisdiction of the court, and that it is necessary to probate such estate.

§ 11.704 Appointment and duties of executor or administrator.

(a) Upon ordering the estate to be probated, the court shall appoint an administrator to administer the estate of the decedent. The person nominated by the decedent's will, if any, to be the executor of the estate shall be so appointed, provided such person is willing to serve in such capacity.

(b) The executor or administrator appointed by the court shall have the following duties and powers during the administration of the estate and until discharged by the court:

(1) To send by certified mail true copies of the order to probate the estate and the will of the decedent admitted to probate by such order, if any, to each heir, devisee and legatee of the decedent, at their last known address, to the governing body of the tribe or tribes occupying the Indian country over which the court has jurisdiction, and to the agency superintendent;

(2) To preserve and protect the decedent's property within the estate and the heirs, so far as is possible;

(3) To investigate promptly all claims against the decedent's estate and determine their validity;

(4) To cause a written inventory of all the decedent's property within the estate to be prepared promptly with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the court;

(5) To give promptly all persons entitled thereto such notice as is required under these proceedings;

(6) To account for all property within the estate which may come into his or her possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

§ 11.705 Removal of executor or administrator.

The Court of Indian Offenses may order the executor or administrator to show cause why he or she should not be discharged, and may discharge the executor or administrator for failure, neglect or improper performance of his or her duties.

§ 11.706 Appointment and duties of appraiser.

(a) Upon ordering an estate to be probated, the court shall appoint a disinterested and competent person as

an appraiser to appraise all of the decedent's real and personal property within the estate.

(b) It shall be the duty of the appraiser to appraise separately the true cash value of each article or item of property within the estate, including debts due the decedent, and to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his or her name to the inventory and appraisal.

§ 11.707 Claims against estate.

(a) Creditors of the estate or those having a claim against the decedent shall file their claim with the clerk of the court or with the executor or administrator within 60 days from official notice of the appointment of the executor or administrator published locally in the press or posting of signs at the tribal and agency offices, giving appropriate notice for the filing of claims.

(b) The executor or administrator shall examine all claims within 90 days of his or her appointment and notify the claimant whether his or her claim is accepted or rejected. If the claimant is notified of rejection, he or she may request a hearing before the court by filing a petition requesting such hearing within 30 days following the notice of rejection.

§ 11.708 Sale of property.

After filing the inventory and appraisal, the executor or administrator may petition the court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.

§ 11.709 Final account.

(a) When the affairs of an estate have been fully administered, the executor or administrator shall file a final account with the court, verified by his or her oath. Such final account shall affirmatively set forth:

(1) That all claims against the estate have been paid, except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay such remaining claims;

(2) The amount of money received and expended by him or her, from whom received and to whom paid, referring to the vouchers for each of such payments;

(3) That there is nothing further to be done in the administration of the estate except as shown in the final account;

(4) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing the final account;

(5) The proposed determination of heirs and indicate the names, ages, addresses and relationship to the decedent of each distributee and the proposed distributive share and value thereof each heir, devisee or legatee is to receive; and

(6) A petition that the court set a date for conducting a hearing to approve the final account, to determine the heirs, devisees and legatees of the decedent and the distributive share each distributee is to receive.

§ 11.710 Determination of the court.

At the time set for hearing upon the final account, the Court of Indian Offenses shall proceed to examine all evidence relating to the distribution of the decedent's estate, and consider objections to the final account which may have been filed by any heir, devisee, legatee, or other person having an interest in the distribution of the estate. Upon conclusion of the hearing, the court shall enter an order:

(a) Providing for payment of approved claims;

(b) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive; and

(c) Directing the administrator or executor to distribute such distributive share to those entitled thereto.

§ 11.711 Descent and distribution.

(a) The court shall distribute the estate according to the terms of the will of the decedent which has been admitted to probate.

(b) If the decedent died intestate or having left a will which has been rejected by the court, the estate shall be distributed as follows:

(1) According to the laws and customs of the tribe if such laws and customs are proved; or

(2) According to state law absent the existence of tribal laws or customs.

(c) If no person takes under the above subsections, the estate shall escheat to the tribe.

§ 11.712 Closing estate.

(a) Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and discharging the executor or administrator.

(b) If an order closing the estate has not been entered by the end of nine months following appointment of executor or administrator, the executor or administrator shall file a written report with the court stating the reasons why the estate has not been closed.

§ 11.713 Small estates.

An estate having an appraised value which does not exceed \$2,000.00 and which is to be inherited by a surviving spouse and/or minor children of the deceased may, upon petition of the executor or administrator, and a hearing before the court, be distributed without administration to those entitled thereto, upon which the estate shall be closed.

Subpart H—Appellate Proceedings

§ 11.800 Jurisdiction of appellate division.

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division, by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review all issues of law presented to it which arose in the case, but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case.

§ 11.801 Procedure on appeal.

(a) An appeal must be taken within 15 days from the judgment appealed from by filing a written notice of appeal with the clerk of the court.

(b) The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The clerk of the court shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(c) In civil cases, other parties shall have 15 days to respond to the notice of appeal.

(d) In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal, and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of cash or bond sufficient to cover damages awarded by the court together with interest.

§ 11.802 Judgment against surety.

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses, and irrevocably appoints the clerk of the court as his or her agent upon whom any papers

affecting his or her liability on the bond may be served.

§ 11.803 Record on appeal.

Within 20 days after a notice of appeal is filed, the clerk of court shall certify and file with the appellate division the record of the case.

§ 11.804 Briefs and memoranda.

(a) Within 30 days after the notice of appeal is filed, the appellant may file a written brief in support of his or her appeal. An original and one copy for each appellee shall be filed with the clerk of court who shall mail one copy by registered or certified mail to each appellee.

(b) The appellee shall have 30 days after receipt of the appellant's brief within which to file an answer brief. An original and one copy for each appellant shall be filed with the clerk of the court who shall mail one copy, by registered or certified mail, to each appellant.

§ 11.805 Oral argument.

The appellate division shall assign all criminal cases for oral argument. The court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

§ 11.806 Rules of court.

The chief magistrate of the appellate division shall prescribe all necessary rules concerning the operation of the appellate division and the time and place of meeting of the court.

Supart I—Children's Court

§ 11.900 Definitions.

For purposes of sections pertaining to the children's court:

(a) *Abandon* means the leaving of a minor without communication or failing to support a minor for a period of one year or more with no indication of the parents' willingness to assume a parental role.

(b) *Adult* means a person eighteen (18) years or older.

(c) *Counsel* means an attorney admitted to the bar of a state or the District of Columbia or a lay advocate admitted to practice before the Court of Indian Offenses.

(d) *Custodian* means one who has physical custody of a minor and who is providing food, shelter and supervision to the minor.

(e) *Custody* means the power to control the day-to-day activities of the minor.

(f) *Delinquent Act* means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.

(g) *Detention* means the placement of a minor in a physically restrictive facility.

(h) *Guardian* means a person other than the minor's parent who is by law responsible for the care of the minor.

(i) *Guardian ad Litem* means a person appointed by the court to represent the minor's interests before the court.

(j) *Juvenile Offender* means a person who commits a delinquent act prior to his or her eighteenth birthday.

(k) *Minor* means:

(1) A person under 18 years of age,

(2) A person 18 years of age or older concerning whom proceedings are commenced in the children's court prior to his or her eighteenth birthday, or

(3) A person 18 years of age or older who is under the continuing jurisdiction of the children's court.

(l) *Minor-in-need-of-care* means a minor who:

(1) Has no parent or guardian available and willing to take care of him or her;

(2) Is unwilling to allow his or her parent or guardian to take care of him or her;

(3) Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health;

(4) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian;

(5) Has been sexually abused;

(6) Has been committing delinquent acts as a result of parental pressure, guidance or approval; or,

(7) Has been committing status offenses.

(m) *Status offense* means an offense which, if committed by an adult, would not be designated a crime under this part or under an ordinance of the tribe.

§ 11.901 The children's court established.

When conducting proceedings under §§ 11.900–11.1114 of this part, the Court of Indian Offenses shall be known as the "Children's Court".

§ 11.902 Non-criminal proceedings.

No adjudication upon the status of any minor in the jurisdiction of the children's court shall be deemed criminal or be deemed a conviction of a crime, unless the children's court refers the matter to the Court of Indian Offenses. Neither the disposition nor evidence given before the children's court shall be admissible as evidence against the child in any proceeding in another court.

§ 11.903 Presenting officer.

(a) The agency superintendent and the chief magistrate of the children's court shall jointly appoint a presenting officer to carry out the duties and responsibilities set forth under §§ 11.900–11.1114 of this part. The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the Court of Indian Offenses. The presenting officer may be the same person who acts as prosecutor in the Court of Indian Offenses.

(b) The presenting officer shall represent the tribe in all proceedings under §§ 11.900–11.1114 of this part.

§ 11.904 Guardian ad litem.

The children's court, under any proceeding authorized by this part, shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor, where the court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship, or where the parent, guardian, or custodian has been accused of abusing or neglecting the minor.

§ 11.905 Jurisdiction.

The children's court has exclusive, original jurisdiction of the following proceedings:

(a) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a juvenile offender, unless the children's court transfers jurisdiction to the Court of Indian Offenses pursuant to § 11.907 of this part.

(b) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a minor-in-need-of-care.

§ 11.906 Rights of parties.

(a) In all hearings and proceedings under §§ 11.900–11.1114 of this part the following rights will be observed unless modified by the particular section describing a hearing or proceeding:

(1) Notice of the hearing or proceeding shall be given the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by certified mail. The notice shall contain:

(i) The name of the court;

(ii) The title of the proceeding; and

(iii) The date, time and place of the proceeding.

(b) The children's court magistrate shall inform the minor and his or her parents, guardian or custodian of their right to retain counsel, and, in juvenile delinquency proceedings, shall tell them: "You have a right to have a

lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the court will appoint counsel for you."

(c) If the children's court magistrate believes there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian with respect to legal representation, the court shall appoint another person to act as counsel for the minor.

(d) The minor need not be a witness against, nor otherwise incriminate, himself or herself.

(e) The children's court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

§ 11.907 Transfer to Court of Indian Offenses.

(a) The presenting officer or the minor may file a petition requesting the children's court to transfer the minor to the Court of Indian Offenses if the minor is 14 years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

(b) The children's court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Court of Indian Offenses.

(1) The transfer hearing shall be held no more than 30 days after the petition is filed.

(2) Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least 72 hours prior to the hearing.

(c) All the rights listed in § 11.906 shall be afforded the parties at the transfer hearing.

(d) The following factors shall be considered when determining whether to transfer jurisdiction of the minor to the Court of Indian Offenses:

(1) The nature and seriousness of the offense with which the minor is charged.

(2) The nature and condition of the minor, as evidenced by his or her age; mental and physical condition; past record of offenses; and responses to past children's court efforts at rehabilitation.

(e) The children's court may transfer jurisdiction of the minor to the Court of Indian Offenses if the children's court finds clear and convincing evidence that both of the following circumstances exist:

(1) There are no reasonable prospects for rehabilitating the minor through resources available to the children's court; and

(2) The offense allegedly committed by the minor evidences a pattern of

conduct which constitutes a substantial danger to the public.

(f) When a minor is transferred to the Court of Indian Offenses, the children's court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

§ 11.908 Court records.

(a) A record of all hearings under §§ 11.900–11.1114 of this part shall be made and preserved.

(b) All children's court records shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.909 Law enforcement records.

(a) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.

(b) All law enforcement records and files shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.910 Expungement.

When a minor who has been the subject of any proceeding before the children's court attains his or her twenty-first birthday, the children's court magistrate shall order the court records and the law enforcement records pertaining to the minor to be destroyed, except for adoption records which shall not be destroyed under any circumstances.

§ 11.911 Appeal.

(a) For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

(b) Any party to a children's court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the children's court within 30 days of the final order of disposition.

(c) No decree or disposition of a hearing shall be stayed by such appeal.

(d) All appeals shall be conducted in accordance with this part.

§ 11.912 Contempt of court.

Any willful disobedience or interference with any order of the children's court constitutes contempt of court which may be punished in accordance with this part.

Subpart J—Juvenile Offender Procedure

§ 11.1000 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness, and shall contain:

(a) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(b) A citation to the section(s) of this part which the minor is alleged to have violated;

(c) The name, age, and address of the minor who is the subject of the complaint, if known; and

(d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

§ 11.1001 Warrant.

The children's court may issue a warrant directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

§ 11.1002 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer observes the minor committing a delinquent act; or

(b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or

(c) A warrant pursuant to § 11.1001 has been issued for the minor.

§ 11.1003 Law enforcement officer's duties.

A law enforcement officer who takes a minor into custody pursuant to § 11.1002 of this part shall:

(a) Give the following warnings to any minor taken into custody prior to any questioning:

(1) The minor has a right to remain silent;

(2) Anything the minor says can be used against the minor in court;

(3) The minor has the right to the presence of counsel during questioning; and

(4) If he or she cannot afford counsel, the court will appoint one.

(b) Release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care or detention is necessary.

(c) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the court.

§ 11.1004 Detention and shelter care.

(a) A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(1) A foster care facility approved by the tribe;

(2) A detention home approved by the tribe; or

(3) A private family home approved by the tribe.

(b) A minor who is 16 years of age or older may be detained in a jail facility used for the detention of adults only if:

(1) A facility in paragraph (a) of this section is not available or would not assure adequate supervision of the minor;

(2) The minor is housed in a separate room from the detained adults; and

(3) Routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1005 Preliminary inquiry.

(a) If a minor is placed in detention or shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exist to believe the minor committed the alleged delinquent act; and

(2) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.

(d) All the rights listed in § 11.906 shall be afforded the parties in a preliminary inquiry.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for detention or shelter care.

(f) If the children's court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:

(1) The act is serious enough to warrant continued detention or shelter care;

(2) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release a minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parent, guardian, or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1006 Investigation by the presenting officer.

(a) The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(1) Determine that no further action be taken;

(2) Begin transfer proceedings to the Court of Indian Offenses pursuant to § 11.907 of this part; or

(3) File a petition pursuant to § 11.1007 of this part to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1007 Petition.

(a) Proceedings under §§ 11.1000–11.1014 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(4) A citation to the section(s) of this part which the minor is alleged to have violated; and

(5) If the minor is in detention or shelter care, the time the minor was taken into custody.

§ 11.1008 Date of hearing.

Upon receipt of the petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1009 Summons.

(a) At least five working days prior to the adjudicatory hearing, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the adjudication of the hearing.

(b) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1010 Adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole

purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 shall be afforded the parties at the adjudicatory hearing. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1009.

(c) If the minor admits the allegations of the petition, the children's court shall proceed to the dispositional stage only if the children's court finds that:

(1) The minor fully understands his or her rights as set forth in § 11.906 of this part and fully understands the potential consequences of admitting the allegations;

(2) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for children's court action; and

(3) The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(d) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(e) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the children's court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

(f) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§ 11.1011 Dispositional hearing.

(a) A dispositional hearing shall take place not more than 15 days after the adjudicatory hearing.

(b) At the dispositional hearing, the children's court shall hear evidence on the question of proper disposition.

(c) All the rights listed in § 11.906 shall be afforded the parties in the dispositional hearing.

(d) At the dispositional hearing, the children's court shall consider any predisposition report, physician's report or social study it may have ordered and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(e) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1012 Dispositional alternatives.

(a) If a minor has been adjudged a juvenile offender, the children's court may make the following disposition:

(1) Place the minor on probation subject to conditions set by the children's court;

(2) Place the minor in an agency or institution designated by the children's court; or

(3) Order restitution to the aggrieved party.

(b) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday or after the minor had reached 18 years of age, in which case the disposition may not continue for more than six months.

(c) The dispositional order is to be reviewed at the children's court discretion, but at least once every six months.

§ 11.1013 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon the motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 shall be afforded the parties in the hearing to review the dispositional order. The notice required by paragraph (a) of § 11.906 shall be given at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1011 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1014 Medical examination.

The children's court may order a medical examination for a minor who is alleged to be a juvenile offender.

Subpart K—Minor-in-Need-of-Care Procedure

§ 11.1100 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The

complaint shall be signed by the complaining witness and shall contain:

(a) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings;

(b) The name, age and address of the minor who is the subject of the complaint, if known; and

(c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

§ 11.1101 Warrant.

The children's court may issue a warrant, directing that a minor be taken into custody if the children's court finds there is probable cause to believe the minor is a minor-in-need-of-care.

§ 11.1102 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or

(b) A warrant pursuant to § 11.1101 of this part has been issued for the minor.

§ 11.1103 Law enforcement officer's duties.

Upon taking a minor into custody the officer shall:

(a) Release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary.

(b) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the children's court.

§ 11.1104 Shelter care.

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

(1) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;

(2) A private family home approved by the tribe; or

(3) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(b) A minor alleged to be a minor-in-need-of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the

detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1105 Preliminary inquiry.

(a) If a minor is placed in shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exists to believe the minor is a minor-in-need-of-care; and

(2) Whether continued shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in § 11.906 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

(1) There is reasonable cause to believe that the minor will run away and be unavailable for further proceedings;

(2) There is reasonable cause to believe that the minor is in immediate danger from parents, guardian or

custodian and that removal from them is necessary; or

(3) There is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years to age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1106 Investigation by the presenting officer.

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(a) Determine that no further action be taken; or

(b) File a petition pursuant to § 11.1107 of this part in the children's court to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1107 Petition.

Proceedings under §§ 11.1100-11.1114 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

(a) The name, birth date, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings; and

(d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

§ 11.1108 Date of hearing.

Upon receipt of the minor-in-need-of-care petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after the filing of the petition, it shall be dismissed unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1109 Summons.

(a) At least five working days prior to the adjudicatory hearing for a minor-in-need-of-care, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the proper adjudication of the hearing.

(b) The summons shall contain the name of the court; the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1110 Minor-in-need-of-care adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the adjudicatory hearing, except that the court may not appoint counsel if the parties cannot afford one. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1109.

(c) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(d) If the circumstances of the petition are sustained by clear and convincing evidence, the children's court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

(e) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

§ 11.1111 Minor-in-need-of-care dispositional hearing.

(a) No later than 15 days after the adjudicatory hearing, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the dispositional hearing except the right to free court-appointed counsel. Notice of the hearing shall be given to the parties at least 48 hours before the hearing.

(c) At the dispositional hearing the children's court shall consider any predisposition report or other study it may have ordered and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(d) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1112 Dispositional alternatives.

(a) If a minor has been adjudged a minor-in-need-of-care, the children's court may:

(1) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the children's court may make whichever of the following dispositions is in the best interest of the minor;

(2) Place the minor with a relative within the boundaries of the reservation subject to such limitations and conditions as the court may prescribe;

(3) Place the minor in a foster home within the boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the court may prescribe;

(4) Place the minor in shelter care facilities designated by the court;

(5) Place the minor in a foster home or a relative's home outside the boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(e) A permanency planning hearing must be held within 18 months after the original placement and every six months thereafter to determine the future status of the minor except when the minor is returned to his or her home and court supervision ceases.

§ 11.1113 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1111 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1114 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall set a date for the termination hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

(d) Summons:

(1) At least five working days prior to the termination hearing, the children's court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

(e) The children's court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) All the rights listed in § 11.906 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

(2) The children's court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(3) The children's court may terminate parental rights if, following efforts to prevent or eliminate the need to remove the minor, it finds such efforts to have been unsuccessful, and it finds beyond a reasonable doubt that:

(i) The child has been abandoned;

(ii) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(iii) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(iv) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(v) The voluntary written consent of both parents has been acknowledged before the court.

(f) Dispositional alternatives:

(1) If parental rights to a child are terminated, the children's court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow the adoption procedures of the tribe, or, in their absence, the adoption procedures of the state within which it is located.

(2) If parental rights to a child are not terminated, the children's court shall make a disposition according to § 11.1112 of this part.

(g) The termination order constitutes a final order for purposes of appeal.

(h) No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

§ 11.1115 Information collection.

(a) The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076-0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection

Clearance Officer, Room 336-SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076-0094], Office of Management and Budget, Washington, DC 20502.

3. A new part 12, The Indian Police, is added, containing newly redesignated §§ 12.100 through 12.105. The table of

contents and authority for the new part 12 are as follows:

PART 12—THE INDIAN POLICE

- Sec. 12.100 Superintendent in command.
- Sec. 12.101 Police commissioners.
- Sec. 12.102 Police training.
- Sec. 12.103 Minimum standards for police programs.

Sec. 12.104 Minimum standards for detention programs.

Sec. 12.105 Return of equipment.

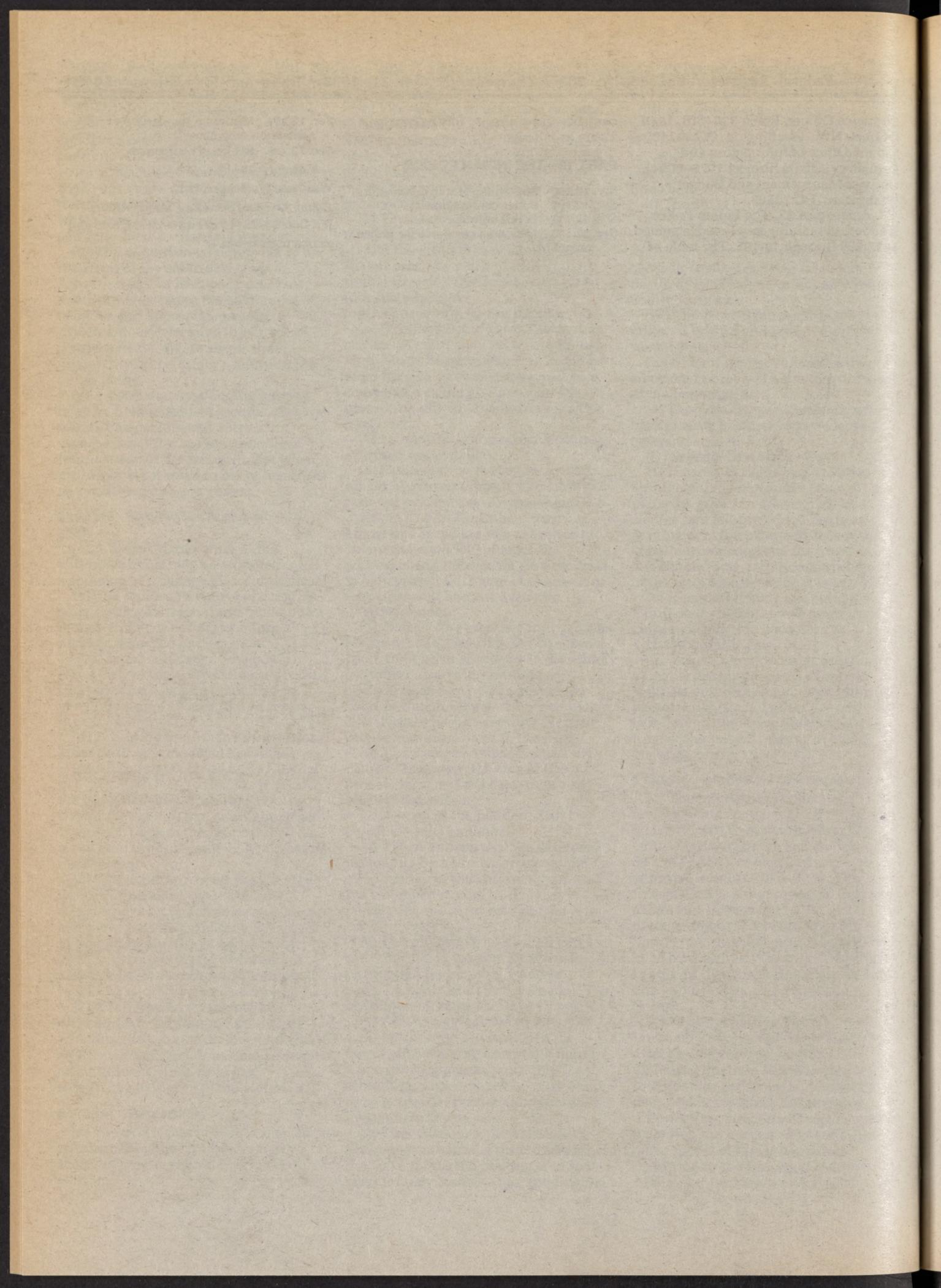
Authority: 25 U.S.C. 2, 13.

Woodrow W. Hopper, Jr.,

Acting Assistant Secretary, Indian Affairs.

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Part III

Department of
Education

Educational Media Research, Production,
Distribution, and Training Program;
Notices

DEPARTMENT OF EDUCATION**Educational Media Research, Production, Distribution, and Training Program**

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1994.

SUMMARY: The Secretary announces funding priorities for fiscal year 1994 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned television sports programming, expand on the number and types of video-described projects, include research on video description and research on captioning technology as a language development tool, continue the video captioning process, and explore the future direction of captioned media programs.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Ernest E. Hairston, U.S. Department of Education, 400 Maryland Avenue SW., room 4629, Switzer Building, Washington, DC 20202-2644. Telephone: (202) 205-9172. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8169; or 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: This notice contains seven priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

One priority in this notice provides cooperative agreements to ensure the continued availability of closed-captioned sports programming. In addition, other priorities will expand on the number and types of video-described projects to include (1)

broadcast and cable video description, (2) described home videos, and (3) research on video description. These priorities will also provide (1) research on captioning technology as a language development tool and (2) a symposium to explore the future directions of captioned media programs.

An additional priority in this notice provides for a cooperative agreement to assist in the provision of video captioning services such as obtaining, screening, evaluating, and captioning educational videos and related media.

These priorities support the National Education Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

On June 23, 1993 the Secretary published a notice of proposed priorities in the *Federal Register* (58 FR 34168).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the *Federal Register*.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, twenty-one parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: Two commenters urged the Secretary to make more than one award under the various priorities in order to continue to generate private sector support or to increase competition.

Discussion: In announcing priorities, the Secretary does not generally establish numbers of awards unless it is critical to the activities included under the priority.

Changes: The specified number of projects has been dropped from priorities two and three, thereby allowing for the possibility of more than one award.

Comment: Three commenters recommended a priority for captioned videos, and one suggested deleting the priority for described videos.

Discussion: The Secretary recognizes the importance of captioned videos, and supports it under activities described in Priority 7. The Secretary also recognizes the importance of video description for persons with visual impairments and the need for continued support of this

activity which is not currently supported through other sources.

Changes: None.

Comment: Four commenters indicated an interest in support for closed-captioning of basic cable television programming.

Discussion: The Secretary recognizes the importance of access to programs shown on local stations, national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally. In making awards the Secretary will continue to support the closed-captioning of basic cable television programming under activities such as Priority 1 of this notice as well as under several current awards.

Changes: None.

Comment: One commenter proposed a cooperative agreement for a series of deaf theatre arts festivals to share the wealth of talent, skill, and theatrical productions developed by grantees under the program during the past two years.

Discussion: The Secretary agrees that there is a need to systematically and broadly disseminate the rich cultural experiences being developed by the grantees. Although the priorities in this notice do not address this issue, consideration may be given to it or a similar vehicle for sharing experiences in future years.

Changes: None.

Comment: One commenter proposed a priority to support the videotape productions of original cultural programs by and for deaf and hard of hearing individuals. The priority would provide seed money to develop the productions. The dissemination of the videotapes would provide a wider audience of consumers access to quality cultural arts programming.

The commenter also proposed a priority to provide support for the development of videotape materials that deal with issues in mental and physical health affecting deaf and hard of hearing individuals. Videotapes would make use of innovative approaches to portray deaf and hard of hearing persons dealing with these issues and identifying possible solutions.

Discussion: The Secretary agrees that there is merit in producing a varied set of videotapes geared toward deaf and hard of hearing individuals, as well as those with other disabilities. However, the activities described in these final priorities are of even greater importance if individuals with disabilities are to have continued access to existing media.

Changes: None.

Absolute Priority 1—Closed-Captioned Sports Programs

Comment: One commenter requested that the Secretary add to this priority specific language giving preference to continued captioning of sports programs currently captioned as well as language to indicate inclusion of specific types of cable programming (i.e., basic, premium, and pay-per-view).

Discussion: The Secretary is not inclined to give preference to currently captioned sports programs because programs that have been previously captioned may have been captioned as the result of program availability, and not necessarily consumer preference. The Secretary wishes to give emphasis to consumer preference. Further, the priority as written encompasses all types of cable programming.

Changes: None.

Comment: One commenter suggested that priorities for captioning should focus on persuading networks and stations to assume a greater degree of responsibility for covering the cost of captioning.

Discussion: The Secretary agrees that increased private sector funding of closed-captioning is important. In fact, since 1980 the portion of captioning paid for through non-federal support has grown significantly, particularly in prime-time news and sports programming on major broadcast networks. The Secretary believes that as the implementation of the Decoder Circuitry Act increases the number of homes with decoders, this trend is likely to accelerate. Therefore, the Secretary believes there is no need at this time to add such a focus to the language of this priority.

Changes: None.

Absolute Priority 2—Broadcast and Cable Television Description and Absolute Priority 3—Described Home Video

Comment: One commenter requested a clarification regarding the requirement for identification of sources of private sector funding. The commenter urged that private funding not be made mandatory, stating that private sector funding was particularly difficult to obtain at this stage of development for description services.

Discussion: The Secretary does not intend to require private sector funding under this priority, but rather to encourage projects to seek any support that might become available.

Changes: Priorities two and three have been changed to indicate that sources of private or other public support for description, should any be available, must be identified.

Comment: Two commenters sought clarification of the methods used to provide description. Another commenter requested clarification of the difference between description for broadcast television and description for cable television. One commenter stated that commercial networks, included under this priority for the first time, may resist description because of the high cost of audio routing equipment for a separate description channel.

Discussion: Two examples of the current methods used for description are identified in the priority: One method uses the Secondary Audio Program (SAP), the other uses open description (similar to open captioning, where all viewers are subject to the descriptions). Public television has primarily broadcast descriptions using the SAP channel, although it has provided open descriptions upon occasion. Providers of video description for cable and home video have used open descriptions. However, the method to be used to provide description is not stipulated in the priority. The inclusion of the terms broadcast and cable within the priority is to indicate that programs on both types of networks may be included in the activities under this priority.

As with open captioning, the commercial networks may prefer not to broadcast open descriptions for regular programming because of overall viewer preference. Further, the Secretary agrees that commercial networks may also resist video description because of the high cost of audio routing equipment for a separate description channel. The priority does not stipulate that commercial broadcast networks must be included in the activities under this priority. The Secretary, however, does not wish to preclude commercial broadcast networks from the priority.

Changes: None.

Comment: One commenter expressed the concern that outreach was not identified as an activity in the priorities for video description.

Discussion: The Secretary agrees that outreach (marketing and dissemination) is a necessary component to approved projects for video description. All applications submitted to the Secretary under these priorities are evaluated under the established selection criteria at 34 CFR 332.32, which include information related to marketing and dissemination.

Changes: None.

Comment: One commenter expressed an interest in a priority for video description of televised sports.

Discussion: While the Secretary agrees that video description of televised

sports may be of interest to persons with visual impairments, the Secretary believes that research is needed as to viewer demographics and interests before designating specific types of programs for description.

Changes: None.

Absolute Priority 4—Research on Video Description

Comment: Three commenters expressed an interest in promoting the educational benefits of descriptive video through research.

Discussion: The Secretary acknowledges the value of research on the educational benefits of descriptive video. The Secretary believes that this topic may be addressed as a related issue under the priority for Research on Video Description.

Changes: None.

Absolute Priority 5—Research on Captioning as a Language Development Tool

Comment: Three commenters strongly supported this priority and stated that it will extend opportunities for developing literacy skills, not only of students with other disabilities, but non-disabled children as well as those for whom English is a second language. One commenter encouraged the Department to broaden this priority to include research into the potential benefits of captioning as a preventive technique, thus covering individuals for whom English is a second language.

Discussion: The authorizing legislation and program regulations at 34 CFR 332.10 clearly state that projects funded under the Educational Media Research, Production, Distribution, and Training Program are to benefit individuals with disabilities. However, research findings and resulting benefits may be useful to other agencies or individuals serving specific populations.

Changes: None.

Comment: One commenter suggested that the word "standards," as used in the background information be replaced by the word "styles" because "standards" suggests an official process that overstates any current activities in this area.

Discussion: The Secretary agrees that the use of the term "standards" may be misleading.

Changes: "Styles" has been substituted for "standards."

Comment: One commenter indicated that a 18-month project period is not an adequate amount of time to refine the research design, conduct the study, and disseminate the results of the project, and recommended that research projects

be 24 months in length with 12-month extensions at the option of the Department.

Discussion: The priority did not specify any project period. The Secretary, however, agrees that a reasonable amount of time should be provided to allow researchers to adequately conduct research efforts. Information about project periods is provided in the Secretary's notice inviting application for new awards.

Changes: None.

Comment: One commenter pointed out that the priority did not mention dissemination of the results of studies or projects.

Discussion: The Secretary acknowledges the importance of disseminating project results. The program regulations at 34 CFR 332.41 require that all projects funded under the Educational Media Research, Production, Distribution, and Training Program disseminate their findings and products broadly.

Changes: None.

Comment: One commenter requested clarification on what was meant by the term "outcomes data" as referred to in paragraph (4) of the priority.

Discussion: The Secretary understands how the term "outcomes" can cause some confusion since it has also been used in reference to educational goals expected of students. However, under this priority the term is intended to mean any concrete or existing data that are collected or result from the research study. In other words, the term refers to actual rather than expected results.

Changes: None.

Comment: One commenter sought clarification on whether a project must conduct the research in more than one setting or more than one type of setting, as referred under paragraph (5) of the priority.

Discussion: The Secretary agrees with the commenter that depending on the population one intends to study or the nature of the study, one setting or type of setting may be appropriate. In establishing this requirement the Secretary intended to emphasize that the settings must be realistic and as natural as possible as opposed to being laboratory-like or in isolation. The settings listed are examples of settings that might be included in the research, but a particular project would not necessarily focus on more than one setting.

Changes: The words "a variety of" have been removed from the priority.

Comment: One commenter suggested that the educational/linguistic implications of caption capture

technology be investigated as a tool in enhancing reading and language development.

Discussion: This priority allows projects to address the issues described in the priority or other issues related to captioning as a language development tool. Thus, research on caption capture technology could be included under this priority.

Changes: None.

Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Comment: Three commenters expressed support for using a symposium format to study long-term strategies for expanding the availability of captioned media. One commenter objected to the emphasis on closed captions rather than on open captions, stating that the greatest percentage of deaf and hard of hearing students are in mainstream programs that might not have access to decoders.

Discussion: The Secretary did not intend for this priority to focus on any one method or form of captioning. The main purpose of the symposium is to explore as many strategies as possible to make captioned media available to as wide a number of deaf and hard of hearing individuals as possible. The term closed-captioning was used in reference to television programming that has been close-captioned.

Changes: None.

Comment: One commenter expressed concern regarding the lack of promotion and dissemination of the educational film and video lesson guides, and proposed that this issue be reviewed and discussed at the symposium. Several commenters suggested various additional pre-symposium activities or additional topics that should be included in the symposium. Other commenters suggested types of individuals that should be symposium attendees or presenters. One commenter suggested that attendance be free of charge and that the proceedings be distributed beyond the participants.

Discussion: The Secretary appreciates the commenters' suggestions and agrees that they could be taken into consideration by applicants responding to this priority. However, the Secretary does not believe this priority should be overly prescriptive. The successful applicant will be encouraged to consider various options in terms of participants, topics, and dissemination of conference proceedings.

Changes: None.

Absolute Priority 7—Educational Video Selection and Captioning

Comment: Twelve comments were received in support of this priority. Nine commenters expressed similar concerns regarding two areas: (1) closed-captioned educational videos and (2) the omission of the lesson guide production. Several pointed out that closed-captioned videos are not fully accessible nor desirable for educational purposes since many schools or programs do not have access to decoders. They also stated that the production of lesson guides has been a standard procedure for several years and has become an integral part of the program and serve a unique purpose. They suggested keeping this activity as an ongoing activity under this priority. One commenter supported the decision to leave out the lesson guide activity because of the low usage statistics, production limitations, and cost factors. The commenter offered support for the activity if these problems were resolved.

Discussion: The rationale and support for open-captioned educational videos is strong and convincing. The Secretary also recognizes the value of the lesson guides to educators who use them. However, the Secretary is also aware of the low usage, high cost factors, and complicated production logistics associated with the guides and believes the Department should evaluate this activity more closely before continuing this activity.

Through a separate mechanism the Secretary plans to review the impact of the lesson guides, teacher usage, and ensuing costs. If warranted, an activity for the development and production of lesson guides may be considered at a future date.

Changes: The priority has been changed to indicate that the educational videos procured for classroom use will include open-captioned and close-captioned videos for each title.

Comment: Three commenters indicated that many people do not know the difference between open, closed, and real-time captioning and know very little about the process. They suggested a clearinghouse that could disseminate captioning information to consumers, agencies, corporations, businesses and schools. Another commenter suggested that information on captioned videos from private databases be disseminated under this activity.

One commenter indicated that providers of new video formats and delivery systems (satellite, CD-ROM, and others) should be made aware of the benefits of captioned materials for other

special-needs groups, as well as for individuals with a hearing loss.

Discussion: The Secretary agrees with the importance of disseminating information about captioning, but believes the operation of a general clearinghouse on captioning or disseminating information from private databases is beyond the intended scope of this priority. Further, activities funded under this program are restricted to individuals who are deaf or hard of hearing. The Secretary will explore under other mechanisms ways to disseminate information about captioning to relevant organizations serving other special-needs groups.

Changes: None.

Comment: One commenter suggested that since advances in technology allow captions to be prepared on computers and since diskettes are used to transfer caption data directly to the finished product, the reference to preparation of captioned scripts is outmoded.

Discussion: The Secretary agrees with this observation.

Changes: This priority has been changed to require the preparation of captions on computer diskettes.

Comment: Two commenters indicated that in the past, the functions of two current contracts (one that parallels the activities under this priority) were under one contract and recommended that many of the current splintered and scattered activities be brought under this cooperative agreement. They suggested that the project evaluate, select, and caption new titles and also maintain a computer database of all video records, including production company, lease company, date of production, date of receipt in the program, lease expiration date, and lease documentation for continual coordination and follow-up with the video companies. Through this arrangement, commenters believe that the Captioned Film and Video Loan Service will more efficiently and effectively meet the needs of consumers.

Discussion: The Secretary will consider this recommendation at the same time the results and recommendations from the symposium under Priority 6 are considered.

Changes: None.

Comment: One commenter recommended that an extensive weeding process be initiated to eliminate theatrical, special interest, and educational titles that are no longer in demand or useful and convene re-evaluation groups and develop guidelines for withdrawing or replacing titles.

Discussion: The Secretary understands the importance of re-

evaluating dated titles and withdrawing obsolete titles and replacing them with more current titles. This is included in the process of evaluating and selecting titles.

Changes: None.

Comment: One commenter recommended that a more broadly based evaluation of videos for captioning and inclusion in the theatrical and special interest collection should be included.

Discussion: The Secretary believes the evaluation process described in the priority will be more broadly based than similar activities in past years and allows for the inclusion of feature and special interest titles.

Change: None.

Comment: Two commenters thought the priority should address the issue of increased duplication from video masters of captioned educational and general interest titles. They anticipated an increasing demand for many titles by consumers because of the American with Disabilities Act (ADA), and stated that contract controlled duplication should be allowed to meet this increased demand.

Discussion: The Secretary is aware of the need to increase the number of duplicate copies of captioned video titles. This effort will be addressed through the process to procure the video titles.

Changes: None.

Comment: One commenter believed that work under the current contract has demonstrated the capability to select and caption 150 educational titles. Therefore, this individual recommended that the number of annual new educational title procurements be increased from 100 to 200-300 titles.

Discussion: The Secretary is pleased that technology and production systems are available to make it possible to caption an increased number of educational titles. The priority, as written, does not specify any given number. Applicants may propose a number they deem reasonable and practical.

Changes: None.

Comment: One commenter suggested that a consumer work group be convened biennially to provide input to the project, and that a similar advisory group of educators be a requirement.

Discussion: The priority as proposed requires strategies for determining the curricular needs of deaf and hard of hearing students as well as an evaluation program that incorporates consumer information into the selection and captioning process. Consumer advisory groups represent one approach to these requirements, and may be

proposed by applicants under this program.

Changes: None.

Comment: One commenter suggested that making captioned videos available through general distribution mechanisms will require the Department to make distribution a prerequisite in the procurement of videos by the captioned film and video loan service.

Discussion: The Secretary will work closely with the successful applicant to determine what measures are necessary to make captioned videos available through general distribution mechanisms.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—Closed-Captioned Sports Programs

Background: This priority supports cooperative agreements to continue and expand closed-captioning of major national sports programs shown on national commercial broadcast or cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables persons who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national sporting events.

Priority: To be considered for funding under this priority, a project must—

- (1) For selecting programs to be captioned, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with hearing impairments;
- (2) Determine the total number of hours and the projected cost per hour for each program to be captioned;
- (3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;
- (4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time or offline—and the projected cost per hour for each method used;
- (5) Provide and maintain back-up systems that would ensure successful, timely captioning service;
- (6) Demonstrate the willingness of major national commercial broadcast or

cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 2—Broadcast and Cable Television Description

Background: This priority supports cooperative agreements for the description of television programming shown on national commercial or public broadcast networks or cable networks, as well as syndicated programs, in order to make television programming more accessible to persons with visual impairments. The intent of this priority is to provide continued and expanded access to described television programming in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired.

Currently, there are two types of described television available to persons with visual impairments: (1) WGBH's descriptive video services (DVS), which offers described video as part of its PBS programming, using the Second Audio Program (SAP) and (2) Narrative Television Network (NTN), which produces and airs described videos via the Nostalgia Channel cable service and affiliated stations. To date, commercial networks and local stations have been unwilling to broadcast described television (using the SAP) due to the required equipment modification and extensive equipment operations. Alternative approaches must be explored.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national commercial or public broadcast networks or cable networks, as well as providers of syndicated programming, to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Absolute Priority 3—Described Home Video

Background: This priority supports cooperative agreements for describing and making available described home videos in order to enhance shared social, educational, and cultural experiences for persons who are visually impaired.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting videos to be described, include criteria that take into account the preference of consumers for particular titles or subjects, the diversity of video titles available, and the contribution of the videos to the general social, educational, and cultural experience of individuals with visual impairments;

(2) Determine the total number of videos and the projected cost per original video to be described;

(3) For each proposed video to be described and made available, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Show evidence that copyright holders would permit video description and distribution of their videos;

(5) Identify strategies for making described home videos available to persons with visual impairments, including any public awareness activities used to inform persons with visual impairments about described home videos; and

(6) Evaluate the effectiveness of the methods and technologies used in providing this service, barriers encountered, and impact on intended populations.

Absolute Priority 4—Research on Video Description

Background: This priority supports research projects on video description services for persons who are visually impaired. Issues to be explored by projects funded under this priority would include, but not be limited to, the incidence of visual impairment within the general population; demographics of the target population; the extent of consumer interest in video description services; the degree of awareness of the availability of video description services; the percentage of visually impaired individuals with stereo televisions; and the feasibility of alternative methods of distribution, including cablecast open descriptions,

broadcast descriptions inserted within the vertical blanking interval, simulcast descriptions, and the Second Audio Programming channel (SAP).

Research resulting from these projects would make major contributions to the body of knowledge regarding video description, would produce findings regarding the impact and relative effectiveness of various distribution methods, and may provide alternative technologies for broadcast distribution.

Priority: To be considered for funding under this priority, a project must—

(1) Address all of the issues identified in the background to this priority, and may also address any related issues;

(2) Identify specific strategies that would be used in the investigation;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze, and report (a) a variety of descriptive and demographic data, including information regarding the potential target population, settings, and the service providers; and (b) outcome data on the effects of different distribution methods on the provision of video description services;

(5) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the identified issues and alternative approaches; and (b) permit use of the findings in policy analyses; and

(6) Design the research activities in a manner that would lead to improved video-described services for individuals with visual impairments.

Absolute Priority 5—Research on Captioning as a Language Development Tool

Background: This priority supports research projects on the effectiveness of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing, as well as the reading and literacy skills of individuals with other disabilities. Issues to be explored by projects funded under this priority could include, but are not limited to (1) captioning styles currently being developed or studied; (2) captioning features as effective educational tools; and (3) the use of captions with other media and multimedia technologies such as interactive videodiscs and CD-ROMs.

Priority: To be considered for funding under this priority, a project must—

(1) Address any of the issues identified in the background to this priority or closely related issues;

(2) Identify specific technological approaches that would be investigated;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze and report (a) characteristics and outcomes data, including the settings, the service providers, and the individuals targeted by the project (e.g., age, disability, level of functioning, membership in a special population, if appropriate); and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(5) Conduct the research in settings such as residential or integrated schools or colleges, or in community settings, as appropriate;

(6) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the approaches and interaction effects between particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses; and

(7) Design the research activities in a manner that would lead to improved services for individuals with hearing impairments or with other disabilities, as may apply.

Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Background: This priority supports one cooperative agreement for a three-day symposium to determine the best strategy or strategies for expanding the availability of captioned media, including captioned videos and closed-captioned television programs, to deaf and hard of hearing individuals in various educational and non-educational settings.

The Captioned Films Loan Service for the Deaf Program (CFD) was created in 1958 by Public Law 85-905 with the original purpose of giving people who are deaf access to motion pictures and enhancing the cultural, educational, and general welfare of that population. At that time most students who are deaf were educated at residential schools. Therefore, when CFD expanded to include the distribution of captioned educational films to students who are deaf, film depositories were established on, though not limited to, some of these campuses.

The depository system has changed little since that time, although deaf and hard of hearing students are now educated primarily in more integrated and local settings. The Secretary is particularly interested in seeking more effective means of providing educational media services to this population while continuing to serve students in residential settings.

During the 1970's closed-captioned television was included among CFD's projects. In 1972 a contract was awarded to develop and test Line 21 concepts and, eventually, prototype decoders. Closed-captioned television, which was entirely supported with Federal funds, officially began in 1980, and the first real-time closed-captioned broadcast took place in October 1982. The number of captioning hours of prime time television started with 16 hours in 1981. Currently all prime time programming, all Saturday morning children's programs, and many daytime and late night programs are closed captioned.

Closed-captioned television is an example of cooperative efforts between the public and private sectors. Department of Education funding provides approximately 40 percent of the current captioning available. The networks currently provide approximately 30 percent, and corporate advertisers, foundations, and contributions account for the remaining 30 percent. Meanwhile, there has been a significant increase in the number of programs being captioned. Further, the Television Decoder Circuitry Act of 1990 mandates that, after July 1993, all television sets with screens 13 inches and larger manufactured in the United States or imported for use in the United States must have built-in circuitry designed to display closed captioning. This Act, along with the increase in the number of available captioned programs, the increase in the number of private funding sources, and the expanded array of television programming options combine to make it necessary to consider the most effective ways to ensure full access to expanded captioned programs in the future.

Thus, the symposium aims to explore strategies that the Department may consider making captioned videos available to a wider number of deaf and hard of hearing individuals, especially those attending local or mainstreamed schools, and strategies for expanding captioned television programming in light of future technology that will increase the number of available channels to 500.

Priority: To be considered for funding under this priority, the project must—

(1) Conduct pre-symposium activities, including reviewing reports and recommendations that resulted from previous evaluation studies of the Captioned Films Program, closed-captioned television, and related materials;

(2) Conduct a symposium that offers at least six work sessions, led by professionals or experts in areas including, but not limited to (a) educational media and technology, (b) television captioning technology, (c) special education administration, covering both mainstream and residential programs, (d) media distribution, (e) consumer advocacy, and (f) film and television post-production services;

(3) Make arrangements for participants to discuss and respond to issues and strategies that would be raised at the symposium—particularly strategies for improving services for deaf and hard of hearing consumers;

(4) Conduct post-symposium activities, including refining formally presented papers, reflecting group discussions and concerns expressed at the symposium, as well as potential strategies and directions for improved services i.e., for better delivery of captioned videos and expanding the availability of closed-captioned television programming; and

(5) Publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses and organizations.

Absolute Priority 7—Educational Video Selection and Captioning

Background: This priority supports one cooperative agreement that will screen, evaluate, caption, and make available educational videos, including classics and special interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of deaf and hard of hearing individuals, and other individuals directly involved in activities promoting the advancement of deaf and hard of hearing individuals in the United States. This activity includes the preparation of captions on computer diskettes. This priority will ensure that students and other individuals with hearing impairments benefit from the same educational videos used to enrich the educational experiences of students and other individuals without hearing impairments.

Priority: To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of deaf and hard of hearing

students in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and suggestions of users into the selection and captioning process;

(3) Establish liaison with and obtain videos from film and video distributors for viewing and evaluation. Select from among submitted video titles those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(4) Develop and implement criteria and procedures for screening and evaluating selected titles;

(5) Make arrangements with respective producers and distributors to have selected videos captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under part F of IDEA and 34 CFR part 330 (by purchasing up to 100 copies of each captioned title, some which will be open-captioned and some which will be closed-captioned);

(6) For selected titles, prepare captions on computer diskettes and check for accuracy. These captions would take into account the age and reading levels of the likely target audience;

(7) Identify, select, and, if necessary, provide training to video evaluators and caption checkers;

(8) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned; and

(9) Prepare and make available to potential consumers information about the availability of captioned videos, including information about the captioned film and video loan service, regulations governing the use of captioned films and videos in the collection, procedures for applying for these services, and descriptions of the videos available.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 330, 331, and 332 Program Authority: 20 U.S.C. 1451, 1452.

Dated: October 15, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media

Research, Production, Distribution, and Training Program)

[FR Doc. 93-25810 Filed 10-20-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.026]

Educational Media Research, Production, Distribution, and Training Program; Inviting Application for New Awards for Fiscal Year (FY) 1994

Purpose of Program: The purposes of this program are to promote the general welfare of deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

These priorities support the National Educational Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 332.

Priorities: The priorities in the notice of final priorities for this program as published elsewhere in this issue of the **Federal Register**, apply to these competitions.

Applications Available: October 26, 1993.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Sports Program (CFDA 84.026A).	2/04/94	4/05/94	\$750,000	\$250,000-750,000	\$250,000	1 to 3	Up to 36.
Broadcast and Cable Television Description (CFDA 84.026C).	2/03/94	4/04/94	\$500,000	\$250,000-500,000	\$250,000	1 to 2	Up to 36.
Described Home Video (CFDA 84.026H).	3/03/94	5/02/94	\$250,000	\$225,000-250,000	\$250,000	1	Up to 36.
Research on Video Description (CFDA 84.026G).	2/04/94	4/05/94	\$250,000	\$50,000-250,000	\$62,500	1 to 4	Up to 24.
Research on Captioning as a Language Development Tool (CFDA 84.026R).	2/04/94	4/05/94	\$400,000	\$75,000-100,000	\$100,000	4	Up to 24.
Symposium on Exploring New Strategies (CFDA 84.026M).	2/04/04	4/05/94	\$150,000	\$125,000-150,000	\$150,000	1	Up to 18.
Educational Video Selection and Captioning (CFDA 84.026D).	1/03/94	3/04/94	\$700,000	\$650,000-700,000	\$700,000	1	Up to 36.

Note: The Department is not bound by any estimates in this notice.

For Applications: To request an application, telephone (202) 205-8485.

Individuals who use a

telecommunications device for the deaf (TDD) may call (202) 205-8169.

For Further Information Contact:
Ernest E. Hairston, U.S. Department of
Education, 400 Maryland Avenue, SW.,
room 4629, Switzer Building,
Washington, DC 20202-2644.

Telephone: (202) 205-9172. Individuals
who use a telecommunications device
for the deaf (TDD) may call (202) 205-
8169.

Program Authority: 20 U.S.C. 1451, 1452.

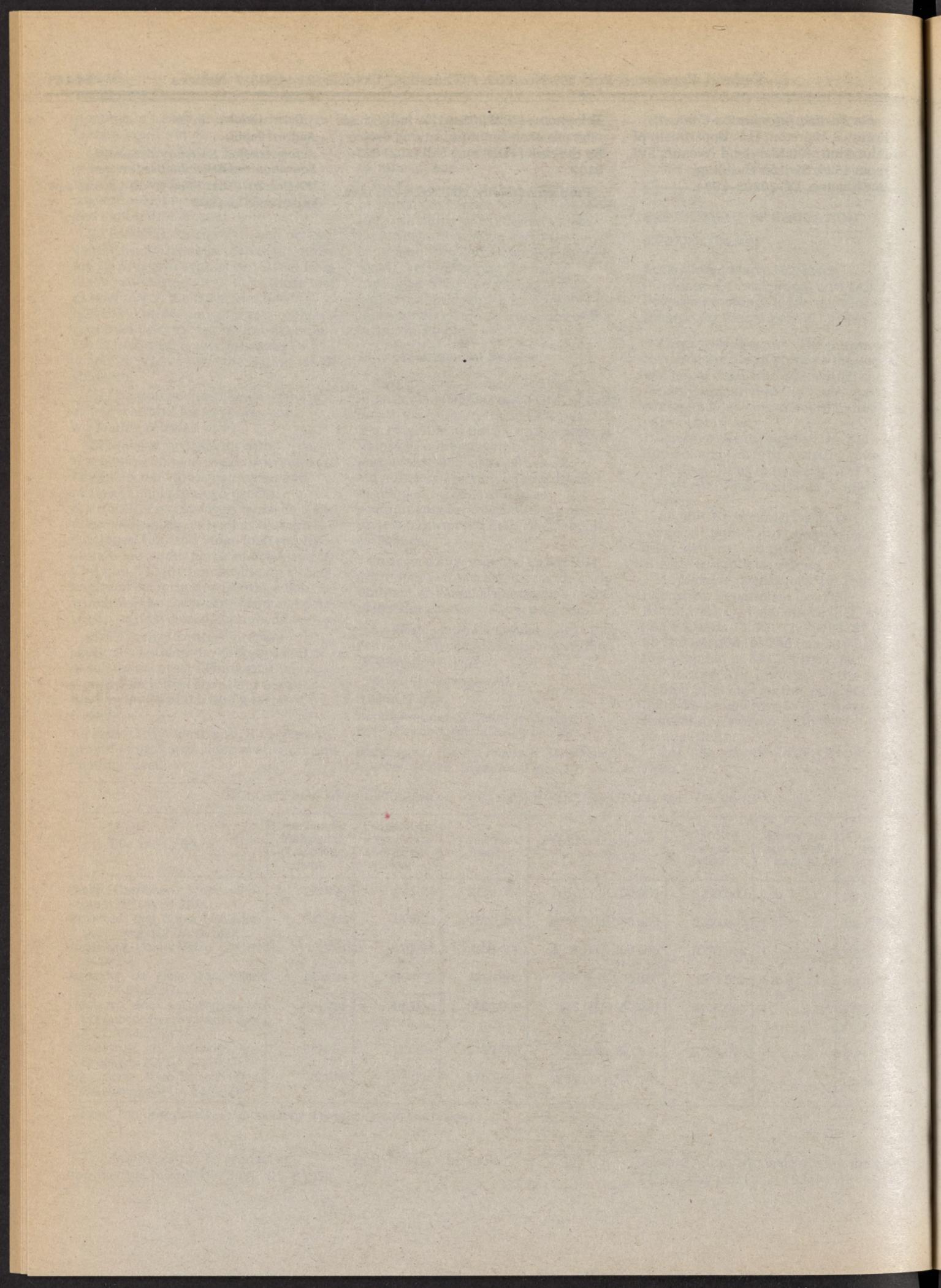
Dated: October 15, 1993.

Andrew Pepin,

*Acting Assistant Secretary for Special
Education and Rehabilitative Services.*

[FR Doc. 93-25811 Filed 10-20-93; 8:45 am]

BILLING CODE 4000-01-P



Federal Register

Thursday
October 21, 1993

Part IV

Department of Labor

Pension and Welfare Benefits
Administration

29 CFR Part 2530
Qualified Domestic Relations Orders;
Request for Information

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2530

Qualified Domestic Relations Orders

AGENCY: Pension and Welfare Benefits Administration.

ACTION: Request for information.

SUMMARY: This document is a request for information to assist the Department of Labor (the Department) in assessing the need for a regulation clarifying certain statutory requirements set forth in Title I of the Employee Retirement Income Security Act (ERISA) and in the Internal Revenue Code (the Code) with regard to qualified domestic relations orders (QDROs). Under provisions creating a limited exception to the anti-assignment and alienation provisions of ERISA and the Code and to the preemption provision of ERISA (hereinafter collectively the QDRO provisions), benefits under a pension plan may be assigned or alienated pursuant to an order issued under state domestic relations law if the order constitutes a qualified domestic relations order. The QDRO provisions generally specify the circumstances under which plan administrators and other plan fiduciaries are required to give effect to a QDRO.

The Department anticipates that information and views provided by plan sponsors, plan fiduciaries, service providers to plans, plan participants and beneficiaries, and other interested persons will aid it in assessing the need for issuing a regulation under the QDRO provisions and the appropriate scope and content of any such regulation. The Department also anticipates that a regulation under the QDRO provisions may have some impact on the interpretation of ERISA's provisions relating to qualified medical child support orders, which were enacted as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). A regulation on the QDRO provisions would affect participants and beneficiaries (including alternate payees) of certain pension benefit plans, as well as the sponsors and fiduciaries of such plans.

DATES: Written comments should be received by the Department of Labor on or before December 20, 1993.

ADDRESSES: Comments (preferably, at least six copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N-5669,

U.S. Department of Labor, Washington, DC 20210. Attention: QDRO RFI. All comments received will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Deborah Hobbs, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219-7901; or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219-9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:**A. General****1. Qualified Domestic Relations Order Provisions**

Section 206(d)(3) of Title I of ERISA, and the related provisions of section 414(p) of the Code,¹ establish a limited exception to the prohibitions against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13).² Under this limited exception, a participant's benefits under a pension plan may be assigned or alienated pursuant to an order that constitutes a qualified domestic relations order (QDRO) within the meaning of those provisions.³ Such QDROs, in addition, survive the federal preemption of State law imposed by ERISA section 514(a) by virtue of ERISA section 514(b)(7), which provides that

¹ All references herein to ERISA section 206(d)(1) should be read to refer also to Code section 401(a)(13). Similarly, except where no corresponding provision exists, all references to paragraphs of ERISA section 206(d)(3) should be read to refer also to the corresponding provisions of Code section 414(p).

² The QDRO provisions were added to ERISA and the Code by the Retirement Equity Act of 1984 (REA), Public Law No. 98-397, 98 Stat. 1426 (1984). Section 302(a) of REA provided that, except as otherwise provided in sections 302 or 303, the amendments made by REA were applicable to plan years beginning after December 31, 1984. REA, Public Law No. 98-397, sections 302, 303, 98 Stat. 1426, 1451-1454. Amendments were made to the QDRO provisions by the Tax Reform Act of 1986, Public Law No. 99-514, section 1898, 100 Stat. 2085, 2957 (1986); by the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100-647, section 1018(t), 102 Stat. 3342, 3589 (1988); and by the Omnibus Budget Reconciliation Act of 1989, Public Law No. 101-239, section 7841(a), 103 Stat. 2106, 2427 (1989).

³ The QDRO exception is applicable to pension plans that are subject to the prohibition against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13). ERISA section 206(d)(3)(L). See also Code sections 414(p) (9) and (11).

section 514(a) "shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i))."

Pursuant to the QDRO provisions, a plan administrator must determine, in accordance with specified procedures, whether an order purporting to divide a participant's benefits under a plan meets the applicable requirements set forth in section 206(d)(3) of ERISA. If the plan administrator determines that the order meets these requirements and is, accordingly, a QDRO within the meaning of section 206(d)(3), the plan administrator must distribute the assigned portion of the participant's benefits to the alternate payee or payees⁴ named in the order in accordance with the terms of the order. An alternate payee named in a QDRO must be treated as a beneficiary under the plan pursuant to section 206(d)(3)(J).⁵

Subparagraphs (G) and (H) of ERISA section 206(d)(3) set forth provisions relating to the procedures that a plan must establish, and a plan administrator must observe, in determining whether an order is a qualified domestic relations order, and in administering the plan and the participant's benefits during the period in which the plan administrator is making such a determination. The plan's procedures must be reasonable, must be in writing, must require prompt notification and disclosure of the procedures to participants and alternate payees upon receipt of an order, and must permit alternate payees to designate representatives for notice purposes. In addition, the plan administrator must complete the determination process and notify participants and alternate payees of its determination within a reasonable period after receipt of the order.⁶

Subparagraph (H) of section 206(d)(3) provides specific procedural protection

⁴ Section 206(d)(3)(K) defines the term "alternate payee" to mean any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

The legislative history of this section indicates that a QDRO may, under certain circumstances, order that payment be made to an agent of the alternate payee. See Staff of Joint Committee on Taxation, 99th Cong., 2d Sess., Explanation of Technical Corrections to the Tax Reform Act of 1984 and Other Recent Tax Legislation 222 (Comm. Print 1187).

⁵ The Code contains no provision parallel to ERISA section 206(d)(3)(J).

⁶ The legislative history of REA specifically authorizes the Secretary of Labor to prescribe regulations defining what is a reasonable period for this purpose. See H.R. Rep. No. 655, 98th Cong., 2d Sess. 20 (1984); and S. Rep. No. 575, 98th Cong., 2d Sess. 22 (1984).

of a potential alternate payee's interest in a participant's benefits during the plan's determination process and for a period of up to 18 months (the 18-month period) during which the issue of the qualified status of a domestic relations order is being determined—whether by the plan administrator, by a court of competent jurisdiction, or otherwise. During the 18-month period, a plan administrator must separately account for any amounts that would have been payable to the alternate payee if the order had been immediately treated as a QDRO and must pay these amounts (including any interest thereon) to the alternate payee if the order is deemed qualified within such period. If the issue as to whether the order is a QDRO is not resolved within the 18-month period, the plan administrator is to pay such amounts to the person or persons who would have been entitled to the amounts if there had been no order. Any determination that an order is a QDRO which is made after the close of the 18-month period is to be applied prospectively only.⁷

In addition, there is evidence that Congress intended to permit plan administrators to take additional steps to protect an alternate payee's potential interest in plan benefits, where the plan administrator is on notice that rights to such benefits are in dispute. The Conference Committee Report on the Tax Reform Act of 1986, in discussing technical corrections to the QDRO provisions, states:

[T]he committee intends that the plan administrator may delay payment of benefits for a reasonable period of time if the plan administrator receives notice that a domestic relations order is being sought. For example, a participant in a profit-sharing plan which is exempt from the survivor benefit rules requests a lump sum distribution from the plan. Before the distribution is made, the plan administrator receives notice that the participant's spouse is seeking a domestic relations order.

The plan administrator may delay payment of benefits.

H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-858 (1986). See also Staff of Joint Committee on Taxation, 99th Cong., 2d Sess., Explanation of Technical Corrections to the Tax Reform

⁷ In this regard, the legislative history of REA explains that, if the plan administrator determines that the order is qualified after the end of the 18-month period, the plan is not liable for payments to the alternate payee for the period before the order is determined to be qualified. The legislative history also indicates, however, that an alternate payee may have a cause of action under state law against the participant for any amounts paid to the participant that should have been paid to the alternate payee. See S. Rep. No. 575, 98th Cong., 2d Sess. 22 (1984); and H.R. Rep. No. 655, 98th Cong., 2d Sess. 21 (1984).

Act of 1984 and Other Recent Tax Legislation 225 (Comm. Print 1187).⁸

If a plan fiduciary, acting in accordance with the fiduciary responsibility provisions of part 4 of title I of ERISA, treats an order as a QDRO (or determines that such an order is not qualified) and distributes benefits in accordance with that determination, paragraph (I) of section 206(d)(3) provides that the obligations of the plan and its fiduciaries to the affected participants and alternate payees with respect to the distribution shall be treated as discharged.⁹

The QDRO provisions detail specific requirements that an order must satisfy in order to constitute a QDRO.¹⁰ The order must be a "domestic relations order" issued pursuant to a State domestic relations law (including a community property law) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a participant.¹¹ Section

⁸ The Joint Committee on Taxation further indicated that Congress intended to permit a plan administrator to honor a State court's restraining order, even if the order does not constitute a QDRO. The Joint Committee on Taxation stated: "Notice of issuance of a stay during the time an appeal is pending is deemed to be notice that the parties are attempting to cure deficiencies in a domestic relations order. Further, the Congress intends that a plan administrator will honor a restraining order prohibiting the disposition of a participant's benefits pending resolution of a dispute with respect to a domestic relations order."

Staff of Joint Committee on Taxation, 99th Cong., 2d Sess., Explanation of Technical Corrections to the Tax Reform Act of 1984 and Other Recent Tax Legislation 224-25 (Comm. Print 1187).

⁹ There is no parallel provision in section 414(p) of the Code. Code section 414(p)(10) provides, however, that, with respect to the requirements of subsections (a) and (k) of section 401, section 403(b), and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments made to an alternate payee pursuant to a QDRO.

¹⁰ The Department has taken the position, pursuant to section 5 of ERISA Procedure 76-1, that it will not ordinarily issue advisory opinions addressing whether a particular order constitutes a qualified domestic relations order under section 206(d)(3) because such a determination requires resolution of a number of factual issues, as well as the interpretation and application of the provisions of the plan(s) to which the order applies. The issuance of this Request for Information does not reflect any change in the Department's views on this issue.

¹¹ In Advisory Opinion 90-46A, dated December 4, 1990, the Department concluded the term "domestic relations order" as used in section 206(d)(3)(B)(ii) did not include a state probate court's order recognizing, on the basis of state community property law, an estate's interest in the pension benefits of the deceased's surviving spouse. The Department noted that Congress intended that the QDRO provisions would have application in those court proceedings conducted primarily to resolve domestic relations issues and would not be available to serve as a mechanism by which a non-participant spouse's interest derived only from state community property law could be enforced against a pension plan.

206(d)(3)(B)(ii). It must create or recognize the existence of an alternate payee's right to receive all or a portion of the benefits payable to a participant under a plan. Section 206(d)(3)(B)(i). Further it must clearly specify the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the participant's benefits to be paid by the plan(s) to each such alternate payee, or the manner in which such amount or percentage is to be determined; the number of payments or period to which the order applies; and each plan to which the order applies. Section 206(d)(3)(C). An order will fail to qualify as a QDRO, however, if it requires the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; to provide increased benefits determined on the basis of actuarial value; or to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.¹² Section 206(d)(3)(D).

An order may provide for payments to an alternate payee before the participant has separated from service if such payments begin on or after the date on which the participant attains (or would have attained) his or her "earliest retirement age." Section 206(d)(3)(E). "Earliest retirement age" is defined as the earlier of (1) the date on which the participant is entitled to a distribution under the terms of the plan; or (2) the later of the date the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan.¹³ Section 206(d)(3)(E)(ii).

¹² The legislative history of the QDRO provisions provides guidance concerning the manner in which benefits may be divided pursuant to a QDRO. It is indicated, for example, that a QDRO may, but is not required to, provide that an alternate payee's portion of a participant's benefits shall increase if the participant's total accrued benefits increase. See H.R. Rep. No. 655, 98th Cong., 2d Sess. 20 (1984). A QDRO may also, but is not required to, provide the alternate payee with a portion of any subsidy to which the participant may become entitled. See S. Rep. No. 575, 98th Cong., 2d Sess. 21 (1984). See also S. Rep. No. 575, 98th Cong., 2d Sess. 21 (1984) (stating general rule that payments to an alternate payee made before the participant retires should be calculated based only on benefits actually accrued and not taking into account any subsidy to which the participant might become entitled); 130 Cong. Rec. 23486-23487 (1984) (floor debate setting out examples of permissible methods of calculating an alternate payee's share and demonstrating how the prohibition against increased benefits should operate).

¹³ The Conference Committee Report on the Tax Reform Act of 1986, discussing this provision, explains: "For example, in the case of a plan which provides for payment of benefits upon separation

A QDRO may provide that the former spouse of a participant shall be treated as a surviving spouse for purposes of section 205 of ERISA. To the extent that a QDRO so provides, the current spouse of the participant shall not be treated as the participant's surviving spouse for those purposes.¹⁴ Section 206(d)(3)(F).

2. Qualified Medical Child Support Order Provisions

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended Part 6 of subtitle B of title I of ERISA to add a new section 609 that provides, in part, that group health plans must provide benefits with respect to a child of a participant in accordance with the applicable requirements of any qualified medical child support order (QMCSO) (hereinafter collectively the QMCSO provisions).¹⁵ OBRA '93 also amended ERISA section 514 to provide, *inter alia*, that an order that is a QMCSO within the meaning of section 609(a)(2)(A) shall survive the preemption of state law imposed by that section.¹⁶ The Department notes that section 609(e) grants the Secretary of Labor authority to issue regulations under section 609 of ERISA in consultation with the Secretary of Health and Human Services.

from service (but not before then), the earliest date on which a QDRO can require payments to an alternate payee to begin is the date the participant separates from service. A QDRO could also require such a plan to begin payments to an alternate payee when the participant attains age 50, even if the participant has not then separated from service."

H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-858 (1986).

¹⁴ The legislative history of the QDRO provisions discusses the effect of a QDRO's treating a former spouse as the surviving spouse. See S. Rep. No. 575, 98th Cong., 2d Sess. 20 (1984) (indicating that, to the extent that a QDRO provides that a participant's current spouse shall not be treated as his spouse under the plan with respect to benefits awarded to an alternate payee, the participant's current spouse would have no spousal rights under ERISA section 205); 130 Cong. Rec. 23486-23487 (1984) (floor debate asserting that if a former spouse is named as alternate payee, the qualified joint and survivor annuity (QJSA) and qualified preretirement survivor annuity (QPSA) protections of ERISA section 205 shall not apply to the benefits awarded to the alternate payee, except to the extent consistent with the QDRO); H.R. Rep. No. 655, 98th Cong., 2d Sess. 19-20 (1984); and S. Rep. No. 575, 98th Cong., 2d Sess. 21 (1984) (stating that, if a former spouse is named by a QDRO as an alternate payee, but the participant dies before attaining earliest retirement age under the plan and before the alternate payee receives payment of the assigned portion of the participant's benefits, the alternate payee shall be entitled to survivor benefits only to the extent that the QDRO specifically requires survivor benefits to be paid).

¹⁵ ERISA section 609, added by OBRA '93, Public Law No. 103-66, section 4301(a) (1993). Section 609(a) relates to QMCSOs.

¹⁶ OBRA '93, Public Law No. 103-66, section 4301(c)(4) (1993) (amending ERISA section 514(b)(7)).

The QMCSO provisions of ERISA section 609(a) were modelled in large part on the QDRO provisions and, therefore, contain many similar requirements. For example, section 609(a)(5) imposes procedural requirements on the administrator of a group health plan with respect to any medical child support order received by the plan that are substantially similar to the procedural requirements that a pension plan administrator must follow in determining whether a domestic relations order constitutes a QDRO. Because of the similarities between the QDRO provisions and the QMCSO provisions and the resulting likelihood that regulations under the QDRO provisions would affect the interpretation of the QMCSO provisions, the Department asks that commentators consider these similarities in formulating comments on the QDRO provisions.

B. Comments

As described herein, the QDRO provisions impose numerous obligations on a variety of parties. The QDRO provisions establish procedures and provide roles for participants, persons seeking the status of alternate payee, State courts adjudicating domestic relations laws, Federal courts acting under ERISA, and plan administrators. The Department, in assessing the need for administrative rulemaking in this area, is interested in information from the public on the problems, if any, that have arisen in interpreting the QDRO provisions.¹⁷ The Department invites interested parties to submit comments that pertain to any such problems. The Department further invites interested parties to submit their views on the extent to which such problems could be resolved through the issuance of regulatory guidance.

In order to assist interested parties in responding, this Notice describes specific areas in which the Department is particularly interested. The

¹⁷ Pursuant to section 206(d)(3)(N) of ERISA and section 414(p)(12) of the Code, the Secretary of Labor has the authority to promulgate regulations under section 206(d)(3) of ERISA and section 414(p) of the Code after consultation with the Secretary of the Treasury.

Pursuant to section 401(n) of the Code, the Secretary of the Treasury also has authority to prescribe rules or regulations as may be necessary to coordinate the requirements of Code section 401(a)(13)(B) and Code section 414(p) (and any regulations issued by the Secretary of Labor thereunder) with the other provisions of Chapter 1 of Subtitle A of the Code. The Treasury Department has promulgated certain regulations relating to distributions pursuant to a QDRO. See Treas. Reg. §§ 1.401(a)-13(g); 1.401(a)-20, Q&A 10, Q&A 25(b), Q&A 27, Q&A 28, and Q&A 31; See also Prop. Treas. Reg. §§ 1.401(a)(9)-1, Q&A H-4; 1.401(a)(9)-2, Q&A 7 and Q&A 11.

Department, however, also requests comments and suggestions concerning any other problems or issues pertinent to the Department's assessment of the possible need for regulatory guidance in this area. It is requested that the public, in responding to specific questions proposed by this Notice, refer to the question number listed in this Notice. Reference to the appropriate question number will aid the Department in analyzing submissions.

Specific areas with respect to which the Department is interested include:

1. Whether problems have arisen relating to whether, and to what extent, state or federal law applies to issues arising under the QDRO provisions.
2. Whether fiduciary or other problems have arisen relating to the plan administrator's various duties under the QDRO provisions, including providing information to participants and potential alternate payees, determining whether an order constitutes a QDRO, making such a determination within a "reasonable period" after receipt of the order, protecting the plan from adverse consequences (including double payment to participants and alternate payees), and administering plan benefits that have been divided pursuant to a QDRO.
3. Whether problems have arisen relating to interpretation of the particular requirements and limitations enumerated in ERISA section 206(d)(3) with respect to the qualified status of a domestic relations order.
4. Whether problems have arisen relating to the procedural requirements established by subparagraphs (G) and (H) of section 206(d)(3) for the process by which a plan administrator must determine whether a proposed order is a qualified domestic relations order, and for the interim administration of the plan and the participant's benefits during the period in which the plan administrator is making such a determination.
5. Whether problems have arisen in determining whether rights and benefits granted to an alternate payee pursuant to a QDRO, or pursuant to a plan's provisions, or both, are consistent with Title I of ERISA and the applicable provisions of the Code.

All submitted comments will be made a part of the record of the proceeding referred to herein and will be available for public inspection.

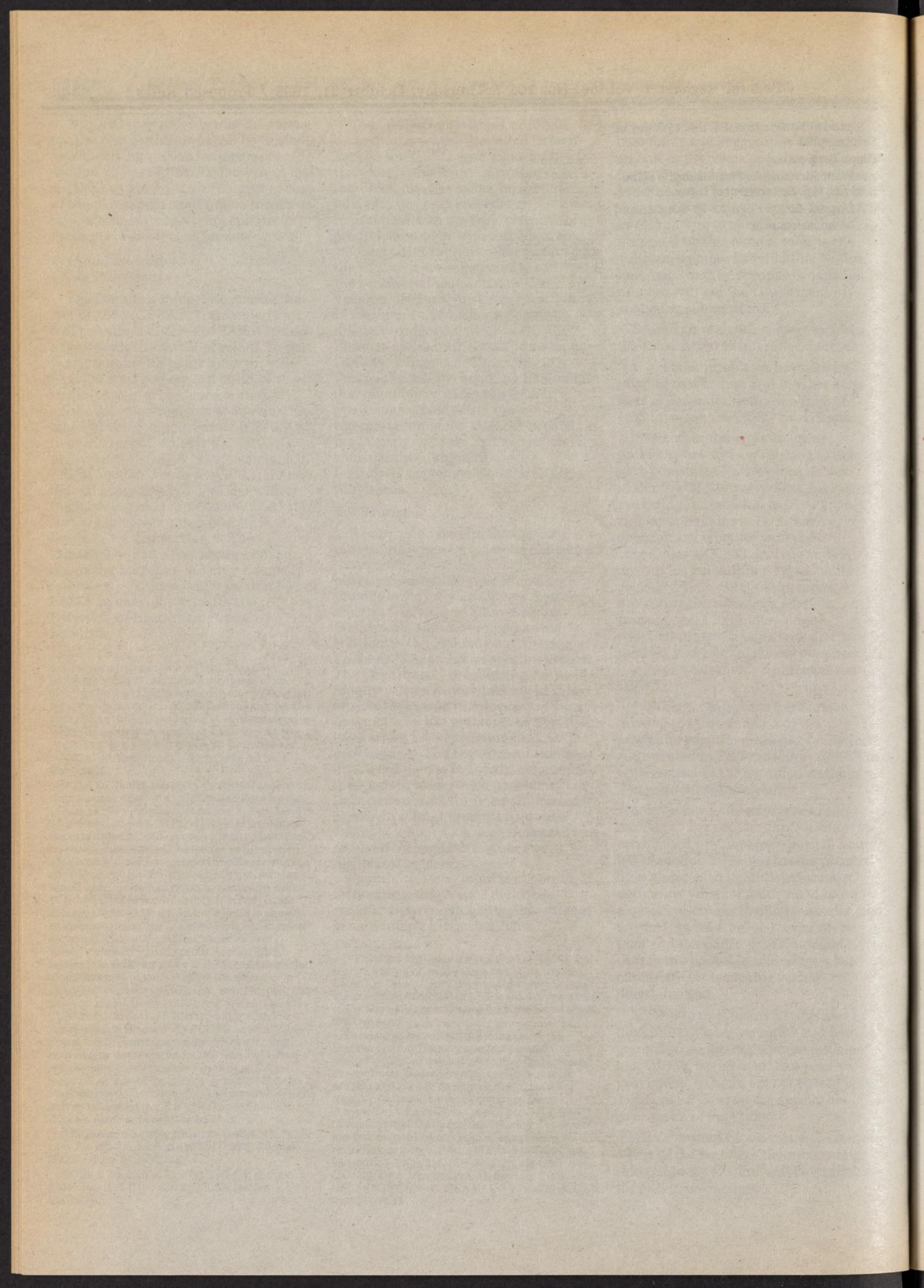
Signed at Washington, DC this 15th day of
October 1993.

Olena Berg,

*Assistant Secretary for Pension and Welfare
Benefits, U.S. Department of Labor.*

[FR Doc. 93-25908 Filed 10-20-93; 8:45 am]

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Federal Register

Thursday
October 21, 1993

Part V

**Department of
Health and Human
Services**

Food and Drug Administration

21 CFR Part 310

Digestive Aid Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0106]

RIN 0905-AA06

Digestive Aid Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that activated charcoal and certain other digestive aid ingredients for over-the-counter (OTC) human use are not generally recognized as safe and effective and are misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC digestive aid drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of January 5, 1982 (47 FR 454), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC digestive aid drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In a document that published in the *Federal Register* on March 30, 1982 (47 FR 13385), the agency advised that it had extended the comment period until June 4, 1982, and the reply comment period to July 5, 1982, on the advance notice of proposed rulemaking for OTC digestive aid drug products to allow for

consideration of additional data and information.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC digestive aid drug products was published in the *Federal Register* of January 29, 1988 (53 FR 2706). Interested persons were invited to file by March 29, 1988, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 31, 1988. New data could have been submitted until January 30, 1989, and comments on the new data until March 29, 1989.

In a document that published in the *Federal Register* on April 19, 1988 (53 FR 12779), the agency advised that it had extended the comment period until May 27, 1988, to allow adequate time for one manufacturer to fully evaluate information it had recently received from the agency and to prepare comments to the notice of proposed rulemaking.

In the *Federal Register* of November 7, 1990 (55 FR 46914), the agency published a final rule establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(8) (21 CFR 310.545(a)(8)) 21 ingredients that had been under consideration as part of this rulemaking for OTC digestive aid drug products.

In the *Federal Register* of May 10, 1993 (58 FR 27636), the agency published a final rule establishing that certain additional active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule is effective on November 10, 1993, and included in § 310.545(a)(8)(ii) 83 additional ingredients that had been under consideration as part of this rulemaking for OTC digestive aid drug products.

After these two final rules were published, only two ingredients remained to be evaluated in this rulemaking: Activated charcoal and lactase enzyme. The agency's action in

this document completes the OTC digestive aids rulemaking with respect to activated charcoal. In this final rule, the agency is adding new paragraph (a)(8)(iii) to § 310.545 to establish that activated charcoal is not generally recognized as safe and effective and is misbranded when present in OTC digestive aid drug products. The agency will publish its final decision on the status of lactase enzyme in OTC digestive aid drug products in a future issue of the *Federal Register*.

The agency stated in the tentative final monograph (53 FR 2706 at 2709) that at that time no submissions had been made to the agency regarding lactase enzyme products, nor was the agency aware of any specific data that would establish general recognition of safety and effectiveness for this ingredient. The agency acknowledged that lactase enzyme is contained in a number of marketed products and is promoted for use as a digestive aid for persons who are intolerant to lactose-containing foods. Although lactase deficiency can be controlled by ingestion of a lactose-free diet, the agency stated that lactase enzyme products could be potentially useful for those persons who do not wish to avoid lactose in their diets. Therefore, the agency invited interested persons to submit specific data and information regarding the use of lactase enzyme products.

In response to the proposed rule, two manufacturers submitted the results of several new studies to demonstrate the effectiveness of lactase enzyme derived from *Aspergillus oryzae* and *A. niger*. The agency is currently reviewing these studies and is awaiting additional information from both manufacturers. Accordingly, in order to complete this rulemaking with regard to all other conditions except lactase enzyme, the agency is not addressing the data submitted on lactase enzyme at this time. Those data will be addressed as soon as the agency's review is completed. If the data support the safety and effectiveness of lactase enzyme, the agency will propose to establish a monograph for OTC digestive aid drug products at that time. Appropriate labeling will be proposed based on the results of the studies being evaluated. In the interim, products containing lactase enzyme may remain in the marketplace and are not subject to this final rule.

In the tentative final monograph for OTC digestive aid drug products (53 FR 2706), the agency did not propose any active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the

event that data were submitted that resulted in the upgrading of any ingredient to monograph status. In this final rule, no active ingredient has been determined to be generally recognized as safe and effective for use in OTC digestive aid drug products. As noted above, the monograph status of lactase enzyme is still under evaluation. Therefore, proposed subpart D of part 357 (21 CFR part 357) for OTC digestive aid drug products is being held in abeyance until the agency's review of lactase enzyme is completed.

This final rule declares OTC digestive aid drug products containing the active ingredient activated charcoal to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the Act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing activated charcoal for this use also would be misbranded under section 502 of the Act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under § 10.30 (21 CFR 10.30) in lieu of an application.

The OTC drug procedural regulations (§ 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed rule for OTC digestive aid drug products (53 FR 2706), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the *Federal Register* for relabeling and reformulation of digestive aid drug products to be in compliance with the monograph. Although data and information were submitted on activated charcoal in response to the proposed rule, they were not sufficient

to support monograph conditions, and no monograph is being established at this time. Therefore, digestive aid drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking (47 FR 454 at 455), the agency advised that conditions for OTC digestive aid drug products that are not generally recognized as safe and effective and are misbranded would be effective 6 months after the date of publication of a final rule in the *Federal Register*. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions in this final rule. This 6-month effective date is also consistent with the effective dates for the other digestive aid active ingredients included in § 310.545(a)(8). Therefore, on or after April 21, 1994, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC digestive aid drug products, two drug manufacturers and three physicians submitted comments on activated charcoal, and four drug manufacturers submitted comments on lactase enzyme. A request for an oral hearing before the Commissioner of Food and Drugs was received on one issue. Copies of the comments and the hearing request received are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

The hearing request is discussed in comment 1. (see section I.A. of this document). In proceeding with this final rule, the agency has considered all objections, requests for oral hearing, and the changes in the procedural regulations. A summary of the comments and the new data with FDA's responses to them follows.

I. The Agency's Conclusions on the Comments

A. Comments on Activated Charcoal

1. Two comments submitted data (Refs. 1 through 6) to support the use of activated charcoal for the treatment of intestinal distress related to gas. The comments requested that activated charcoal be included in either the monograph for OTC antifatulent or

OTC digestive aid drug products. One comment requested an oral hearing regarding inclusion of activated charcoal in the OTC antifatulent monograph if it was found to be a Category I ingredient in the OTC digestive aid monograph. Two other comments argued that activated charcoal was an antifatulent ingredient and objected to its inclusion in the OTC digestive aid monograph.

The agency has reviewed the data and concludes that they are insufficient to support the use of activated charcoal for the treatment of intestinal distress related to gas. Accordingly, activated charcoal will not be included in either monograph, and a hearing is not necessary.

Jain et al. (Ref. 1) conducted a randomized, placebo-controlled, double-blind, crossover study in which the effect of activated charcoal in reducing gas in the lower intestinal tract was evaluated by measuring breath hydrogen levels. Sixty-nine healthy adults in India and 30 in the United States participated in the study. Serial end-expiratory breath samples were collected at 30-minute intervals from each subject for 4½ hours. A dose of 1,040 milligrams (mg) of activated charcoal or placebo was administered after the first sample was collected and again 1 hour later. Lactulose, the substrate used to produce hydrogen in the colon, was administered ½ hour after the first dose. Symptoms of bloating, abdominal cramps, and diarrhea were recorded for 4 hours. The investigators reported that activated charcoal compared to placebo significantly ($p < 0.05$) reduced breath hydrogen levels and provided symptomatic relief (reduced symptoms of bloating, abdominal cramps, and diarrhea). One design problem with this study was that activated charcoal was given before the lactulose (the substance used to produce the hydrogen).

In a triple-crossover, double-blind, placebo-controlled study (Ref. 2), Jain et al. evaluated the effects of activated charcoal, placebo, and simethicone in reducing gas in the colon as measured by breath hydrogen levels in 10 healthy subjects. Results were provided for nine subjects; one subject was excluded due to failure to produce hydrogen gas. The study design was similar to that used in the first Jain et al. study (Ref. 1), except that 8 ounces (oz) of baked beans were used as the gas-producing substrate and serial breath samples were collected at 30-minute intervals for 7 hours. The beans were eaten 30 minutes after the first doses of either activated charcoal, simethicone, or placebo. Simethicone was administered at a dose of 80 mg and

activated charcoal at 1,040 mg, with repeat doses given after 1 hour. The investigators reported that only activated charcoal significantly ($p < 0.05$) reduced breath hydrogen levels and reduced abdominal symptoms (bloating and abdominal discomfort).

In a placebo-controlled, crossover study (Ref. 3), Vargo, Ozick, and Floch evaluated the effect of activated charcoal on breath hydrogen levels in 12 subjects after a bean meal using a design and dosage similar to the Jain studies. A statistically significant reduction ($p < 0.05$) in breath hydrogen levels was found only at the 7-hour (420-minute) collection period. Further, this study only measured breath hydrogen; symptoms of gas were not evaluated.

Hall, Thompson, and Strother (Ref. 4) evaluated the effects of activated charcoal on breath hydrogen levels and the number of flatus events in a randomized, double-blind, placebo-controlled, crossover study. Baseline data were collected on the number of times flatus was passed each hour for 7 hours following administration of a normal meal (containing no known gas-forming items). Each of the 13 subjects in this part of the study also had a bean meal on two separate occasions (with a period of at least 2 days between bean meals) and recorded flatus events after each bean meal. The subjects received either 582 mg of activated charcoal or placebo administered immediately after the bean meal and 2 hours later. In an additional test to determine the effectiveness of a smaller dose, seven subjects were given 388 mg of activated charcoal only at 2 hours after the meal. In the breath hydrogen portion of the study, 10 subjects were fed a normal meal and 10 subjects were fed a bean meal. The subjects fed the normal meal were not treated. The subjects receiving the bean meal were treated with either 582 mg of activated charcoal or placebo immediately after the meal and every 30 minutes thereafter for a total of five doses (2,910 mg of activated charcoal).

The mean number of flatus events per subject was almost three following the normal meal and 14.5 following the bean meal. When the bean meal was followed by activated charcoal, the mean number of flatus events decreased to less than three ($p < 0.001$ compared to placebo). In the additional study involving 388 mg of activated charcoal, the mean number of flatus events during the first 3 hours after the meal was greater compared to the subjects who received 582 mg. However, there was no significant difference between the two groups in the number of flatus events during the last 4 hours of observation. The authors explained this lack of

difference on normal transit time to the colon (2 to 3 hours) and stated that once activated charcoal reaches the colon, the lower dose is also effective in reducing flatus events. In the breath hydrogen portion of the study, the mean breath hydrogen concentrations were similar for 4 hours following the normal meal and the bean meal followed by placebo. Thereafter, the concentrations increased threefold for the next 4 hours. Concentrations following the bean meal and activated charcoal remained low throughout the study and after the 4th hour were significantly different ($p < 0.001$) compared to the bean meal-placebo group.

In another study (Ref. 5), Potter et al. used *in vitro* and *in vivo* methods to evaluate the ability of activated charcoal to reduce intestinal gas production. The *in vivo* evaluation involved a double-blind study that measured breath hydrogen levels and flatus events of 10 healthy subjects. Each subject was studied on four occasions, twice with placebo and twice with activated charcoal. Subjects were fed a bean meal followed by 1,000 mg of activated charcoal or placebo. Doses were repeated every 30 minutes for a total of four doses. Breath hydrogen levels were obtained at time zero and every hour for 9 hours. Subjects also recorded the number of times they passed flatus. The investigators reported no significant differences in breath hydrogen levels or the number of flatus events between the treatment and placebo groups. The investigators concluded that activated charcoal does not reduce the volume of bowel gas.

Riggs (Ref. 6) reported the results of a study involving a pretest and test meal. Fifty-three subjects ate a gas-producing pretest meal and took two placebo capsules upon onset of symptoms. Subjects were dropped from the study if they did not develop symptoms within 1 hour or if they developed symptoms but responded to the placebo medication. Subsequently, 42 subjects were given a test meal (identical to the pretest meal). At the onset of symptoms, subjects were randomized to receive activated charcoal or placebo in a blinded fashion. One subject was dropped for not having symptoms after consuming the test meal. Twenty-one subjects received activated charcoal, and 20 subjects received placebo. Every 30 minutes the subject could take an additional dose, up to a maximum of four doses. The subjects rated the degree of overall symptom relief as none, poor, fair, good, or excellent. Riggs reported that 71 percent of the subjects who took activated charcoal rated their relief (of

pain and/or cramping and overall symptom relief) "as good to excellent," as compared to only 35 percent who took placebo. Riggs noted, however, that several factors (the time to complete relief, the percentage of subjects with complete relief within 2 hours, and the duration of flatulence) did not demonstrate a statistically significant difference. Riggs stated that these factors did show a "trend" favoring activated charcoal, particularly when only those subjects that had a significant history of symptoms were considered.

The agency concludes that these studies do not provide sufficient evidence to establish that activated charcoal can be generally recognized as safe and effective for use as an OTC antifatulent or digestive aid. The majority of the studies (Refs. 1 through 5) are not presented in sufficient detail for an indepth agency review. The statistical significance of the findings cannot be verified because of the absence of individual subject data, which have never been provided. Further, the subjects used were inappropriate in most studies. The agency considers it necessary that studies be conducted in a population where all subjects have the condition in question, rather than relying entirely on volunteers in which the condition may or may not occur. Riggs (Ref. 6) was the only investigator that used subjects with a history of meal-induced gastrointestinal discomfort. Although Riggs used the correct type of subjects, the sample size was too small to demonstrate a clinically important difference.

Regarding this sample size, the comment stated that a sample size of 21 subjects in each group provides 90-percent power for detecting a clinically important difference. However, the agency maintains that to obtain a 90-percent power at a 0.05 level (two-sided), the sample size should be approximately 80 subjects per group. If the number were doubled as a precaution, as stated in the protocol, the final sample size would be 160 subjects per group. The study included 21 subjects in the activated charcoal group and 20 subjects in the placebo group.

The study (without invoking considerations of interim analyses and multiple comparisons) was negative for its primary prestated endpoints. While numerically these results are in the right direction, the study was too small to be definitive. Issues such as interim analyses, multiple comparisons, and unspecified subsetting must be considered. With those considerations, the findings in the Riggs study at best might help plan additional studies;

however, they do not change the outcome of this negative trial.

Finally, additional data are needed to establish the dosage range, dosage interval, or dosage duration. In addition, data would be needed to establish whether subsequent dosing is needed because colon gas will eventually dissipate without treatment. Because the submitted data are inadequate to establish the effectiveness of activated charcoal for the relief of symptoms of intestinal distress related to gas, activated charcoal is not a monograph ingredient.

The agency's detailed comments and evaluation of the above data are on file in the Dockets Management Branch (Refs. 7, 8, and 9).

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(3) Vargo, D., L. Ozick, and M.H. Floch, "The Effect of Activated Charcoal on Breath H₂ Concentration in Subjects With Low and High Baseline H₂ Production," Comment No. CP1, Docket No. 81N-0106, Dockets Management Branch.

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(6) Riggs, M.W., "Activated Charcoal Study, Final Report," copy included in Comment No. CP2, Docket No. 81N-0106, Dockets Management Branch.

(7) Letter from W.E. Gilbertson, FDA, to J. Geils, Requa, Inc., Coded LET1, Docket No. 81N-0106, Dockets Management Branch.

(8) Letter from W.E. Gilbertson, FDA, to J. L. Geils, Requa Inc., Coded LET5, Docket No. 81N-0106, Dockets Management Branch.

(9) Letter from W.E. Gilbertson, FDA, to W.R. Weaver, Gulf Bio-Systems, Inc., Coded ANS1, Docket No. 81N-0106, Dockets Management Branch.

2. Two comments stated that activated charcoal could be placed in either the digestive aid monograph or the antifatulent monograph because the indications for ingredients covered by both monographs are strikingly similar. One of the comments stated that there is very little difference between the indications proposed in the digestive aid tentative final monograph (i.e., "for relief of symptoms of gastrointestinal distress such as * * * fullness,

pressure, bloating, or stuffed feeling," (optional: "commonly referred to as gas,") (optional: "pain," and/or "cramping,") "which occur(s) after eating,") (53 FR 2706 at 2713)) and the indications proposed in the amendment to the antifatulent final monograph (i.e., "alleviates" or "relieves" * * * "bloating," "pressure," "fullness," or "stuffed feeling" "commonly referred to as gas," (53 FR 2716 at 2717)). The comment stated that the only apparent difference is that the digestive aid indication associates the symptoms of gas with the consumption of food, whereas the antifatulent indication does not. The comment contended that this approach does not make scientific sense because the symptoms of gaseousness are almost always associated with the ingestion of a symptom-provoking meal. The comment argued that consumers will become confused because antifatulent drug products are able to use the term "antigas" and digestive aid products cannot, even though "antigas" may be the best term to describe the symptomatic relief provided by activated charcoal. The comment requested that FDA allow the term "antigas" as an alternative statement of identity to "digestive aid" because "antigas" is the most accurate and recognizable term describing the symptomatic relief provided by activated charcoal.

The agency has considered activated charcoal in both the antifatulent and the digestive aid drug products rulemakings. The data submitted to both rulemakings were found to be insufficient to classify activated charcoal as a monograph ingredient for either of these uses. Accordingly, because activated charcoal is not being included in either monograph, the agency does not need to address the statement of identity for this ingredient. Should activated charcoal achieve monograph status in the future, the agency will address its statement of identity at that time.

B. Comments on Testing Digestive Aid Ingredients

3. Two comments stated that FDA should provide clinical protocol design criteria appropriate for OTC digestive aid drug products. The first comment stated that the agency had greatly modified the approach recommended by the Panel for the digestive aid drug category. The comment was concerned that the agency had not published alternative guidelines to clarify how a sponsor should go about investigations to obtain Category I labeling claims.

The second comment stated that if the agency wanted to be helpful in this area it should clearly articulate protocol standards and criteria that can be commented upon, revised if necessary, and then followed. The comment expressed dissatisfaction with certain testing criteria provided at the March 8, 1988, meeting (Ref. 1). The comment felt that the criteria were not applicable to OTC drug products designed to provide symptomatic relief for self-limiting conditions, but rather were applicable to "new drugs" designed to treat serious, chronic, and organic disease. The comment stated that the public and the industry are unaware, as a whole, of what testing criteria are or are not acceptable. The comment argued that if the agency does not know or cannot articulate what label claims it will permit or the protocol criteria it would require to gain Category I status as a digestive aid, it is quite clearly preventing the industry from ever achieving this goal. The comment requested that the agency waive its general policy of not publishing testing guidelines in tentative final monographs and officially state and notify the public, through a written guideline in a revision to the digestive aid tentative final monograph, as to its proposed protocol design criteria to obtain Category I status for OTC digestive aid ingredients.

The Panel provided fairly extensive testing guidelines in its report on OTC digestive aid drug products (47 FR 454 at 485 through 486). The Panel recognized that a generally accepted protocol for the testing of drug products used for the treatment of symptoms of intestinal distress was not available. Further, because of the several categories of drugs marketed for the relief of these symptoms and the different mechanisms of these drugs, the Panel realized that it was unlikely that a single protocol, which would be appropriate for all of these drugs, could be developed. The Panel did not attempt to produce such a protocol. However, the Panel believed that there were important issues that must be considered to ensure proper evaluation of these drugs, and it developed guidelines to aid investigators in designing effectiveness tests. The Panel suggested that deviations from these guidelines be discussed with the appropriate FDA personnel prior to initiation of a study.

The agency did not address testing guidelines in its proposed rule on OTC digestive aid drug products (53 FR 2706 at 2712) and is not providing specific testing guidelines in this document. In revising the OTC drug review

procedures relating to Category III ingredients, published in the Federal Register of September 29, 1981 (46 FR 47730), the agency announced its policy that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. In the same issue of the Federal Register (46 FR 47740), the agency published a policy statement concerning the submission and review of protocols to evaluate an ingredient or condition in the OTC drug review. The agency has stated that it will meet with manufacturers, at their request, to discuss protocols and other testing issues involving conditions that industry is interested in upgrading and to advise industry on the adequacy of proposed testing protocols.

The March 8, 1988, meeting (Ref. 1) referred to by the comment involved a discussion of clinical data submitted to establish the effectiveness of an ingredient for OTC digestive aid or antifatulent use. The agency's view was that the data were insufficient to justify the dosage range, interval, or duration and the indications requested by the comment. The meeting included a discussion of the patient population to be used in any future studies. The data from the studies and the agency's minutes of this meeting are included as part of the public administrative file for this rulemaking and can be obtained by any interested manufacturer who wishes to ascertain the agency's views. Based on this open public record and the agency's willingness to review testing protocols, the agency sees no need to develop protocol design criteria through notice and comment rulemaking.

Reference

(1) Comment No. MM1, Docket No. 81N-0106, Dockets Management Branch.

C. Comments on Labeling

3. Several comments discussed proposed labeling for OTC digestive aid drug products. Because no active ingredients have been classified as a monograph condition in this final rule for OTC digestive aid drug products, the agency is not addressing the comments' requests at this time. In the future, should a monograph be established for this class of OTC drug products, the agency will consider labeling recommendations, such as those made by the comments, at that time.

II. The Agency's Final Conclusions on OTC Digestive Aid Drug Products

At this time, the agency has determined that no active ingredient has

been found to be generally recognized as safe and effective and not misbranded for use as an OTC digestive aid.

In the Federal Register of November 7, 1990 (55 FR 46914), the agency published a final rule establishing that 21 active ingredients for OTC digestive aid use were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and listed 21 ingredients in § 310.545(a)(8) (currently designated as § 310.545(a)(8)(i)). In the Federal Register of May 10, 1993 (58 FR 27636), the agency published a final rule establishing that 83 additional active ingredients for OTC digestive aid use were not generally recognized as safe and effective. That final rule is effective on November 10, 1993, and lists the 83 ingredients in paragraph (a)(8)(ii). In this final rule, the agency is adding new paragraph (a)(8)(iii) to § 310.545 to include activated charcoal. This final rule expands the list of nonmonograph ingredients and establishes that any OTC digestive aid drug product containing activated charcoal is not generally recognized as safe and effective. Therefore, activated charcoal, when labeled, represented, or promoted for OTC use as a digestive aid, is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act, for which an approved application under section 505 of the act and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under § 10.30 in lieu of an application. In conclusion, any OTC digestive aid drug product containing any of the 105 ingredients listed in § 310.545(a)(8) that is initially introduced or initially delivered for introduction into interstate commerce after the applicable effective date in this paragraph is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 2706 at 2713). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC

digestive aid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC digestive aid drug products is not expected to pose such an impact on small businesses. As noted above, two earlier final rules established that a total of 104 active ingredients used in OTC digestive aid drug products were nonmonograph ingredients. This final rule covers one additional ingredient: Activated charcoal. The agency is aware of only a few products that contain this for OTC digestive aid use. Based on the limited number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. Section 310.545 is amended by adding paragraph (a)(8)(iii); by adding and reserving paragraphs (d)(16) through (d)(20); by adding paragraph (d)(21); and by revising the introductory text of paragraph (d) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(8) * * *

(iii) Charcoal, activated

* * * * *

(d) Any OTC drug product that is not in compliance with this section is

subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(21) of this section.

* * * * *

(21) April 21, 1994, for products subject to paragraph (a)(8)(iii) of this section.

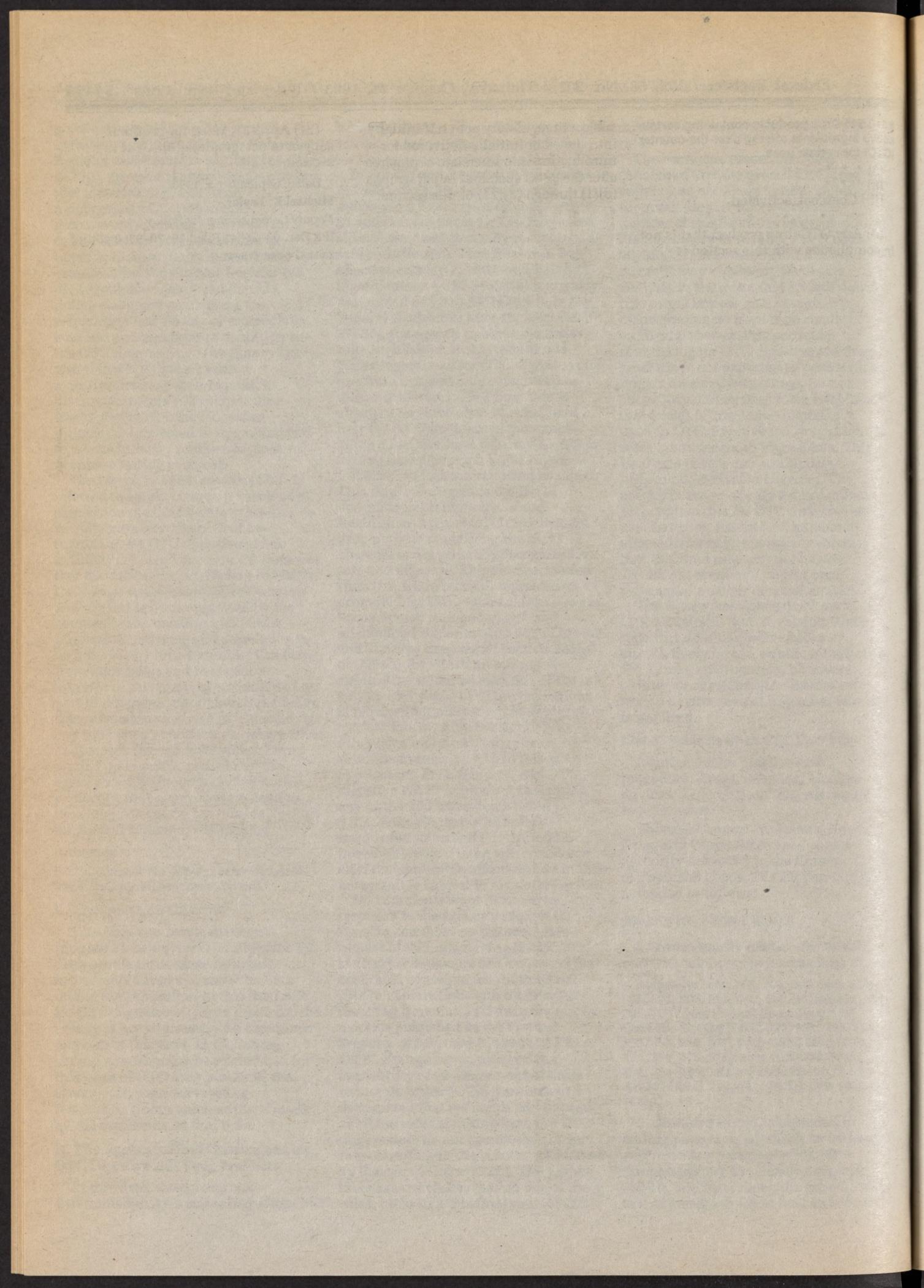
Dated: September 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-25841 Filed 10-20-93; 8:45 am]

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Federal Register

Thursday
October 21, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

**21 CFR Parts 310 and 347
Skin Protectant Drug Products for Over-
the-Counter Human Use; Astringent Drug
Products; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 347

[Docket No. 78N-021A]

RIN 0905-AA06

Skin Protectant Drug Products for Over-the-Counter Human Use; Astringent Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph for over-the-counter (OTC) skin protectant drug products and establishing conditions under which OTC astringent drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC astringent drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 21, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of September 7, 1982 (47 FR 39412 and 39436), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking for OTC external analgesic drug products and OTC skin protectant drug products. The agency also reopened the administrative records for these rulemakings to allow for consideration of the reports and recommendations on OTC astringent drug products prepared by the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel), which was the advisory review panel responsible for evaluating data on the active ingredients used as astringents. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

In the *Federal Register* of February 15, 1983 (48 FR 6820), the agency published a notice of proposed rulemaking for OTC skin protectant drug products. The agency issued this notice after considering the report and recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) and public comments on an advance notice of proposed rulemaking that was based on those recommendations. Interested persons were invited to submit comments by April 18, 1983, new data by February 15, 1984, and comments on the new data by April 16, 1984.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC skin protectant drug products used as astringents was published in the *Federal Register* of April 3, 1989 (54 FR 13490). Interested persons were invited to file by June 2, 1989, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. New data could have been submitted until April 3, 1990, and comments on the new data until June 4, 1990. Interested persons were invited to file comments on the agency's economic impact determination by August 1, 1989.

The agency stated in the proposal that it had determined that the external analgesic and skin protectant uses of OTC astringent drug products are so closely related that it would not serve the public interest to proceed with two separate rulemakings for the same ingredients. Accordingly, the agency proposed to combine the rulemakings for the external analgesic and skin protectant uses of OTC astringent drug products and to place the monograph for these products in the OTC skin protectant monograph. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC skin protectant drug products used as astringents.

The OTC drug procedural regulations (21 CFR 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification,

and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed regulation for OTC skin protectant drug products used as astringents (54 FR 13490), the agency advised that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the *Federal Register*. Therefore, on or after October 21, 1994, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an application or abbreviated application (hereinafter called application) approved under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR part 314. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC skin protectant drug products used as astringents, two manufacturers submitted comments. Copies of the comments are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to

the call-for-data notices published in the *Federal Register* of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. Comment on Ferric Sulfate

1. One comment submitted information (Refs. 1 through 32) to support both OTC and professional use of ferric subsulfate solution (Monsel's Solution) as an astringent. The comment suggested consumer use as an astringent/hemostatic agent to arrest bleeding caused by minor surface cuts and grazes; professional use would be to arrest bleeding of superficial skin wounds resulting from minor surgical procedures, such as biopsies and curettage. The comment requested an oral hearing if the agency found the information to be inadequate.

The agency finds the information submitted by the comment insufficient to include ferric subsulfate solution in the final monograph as a topical astringent for either consumer or health professional use.

Most of the references provided refer to the use of ferric subsulfate solution as a hemostatic agent/styptic by medically trained health professionals in a clinical setting after biopsies, minor surgery, and other procedures causing minimal bleeding. None of the data provided suggest that a product containing ferric subsulfate as an astringent/hemostatic agent has ever been used or could be safely used by consumers. Further, the agency is not aware of any other data that show safety or effectiveness for OTC use by consumers. Therefore, the agency has no basis to include ferric subsulfate as an astringent for OTC consumer use in this monograph.

Regarding professional use, the references suggest that there are undesirable side effects and safety risks associated with using ferric subsulfate solution to arrest bleeding due to minor surgical procedures. Several references include reports of ferric subsulfate solution pigmentation of the skin. Larson (Ref. 1) states that, although not common, pigmentation of the skin may result from sideroblast deposits or from stimulation of melanocytes. Larson adds that ferric subsulfate has a long-lasting cytotoxic effect that may make subsequent histologic examination of tissue difficult. Olmstead, Lund, and Leonard (Ref. 2) consider ferric

subsulfate a histologic nuisance and discourage its use following biopsies of pigmented lesions or tumors that may present diagnostic difficulties. They claim ferric subsulfate promotes artifacts that can be troublesome to the pathologist if rebiopsy of a lesion is necessary, adding that ferric subsulfate may distort or obscure the basic pathologic process. Amazon, Robinson, and Rywlin (Ref. 3) describe the capacity of ferric subsulfate to produce ferrugination of collagen fibers, skeletal muscle, and perichondrium and to produce permanent discoloration of the skin. They state that when there is injury to skeletal muscle and other deep tissues by ferric subsulfate solution, an inflammatory reaction persists at these sites for weeks. They caution that clinicians should be aware that ferric subsulfate solution has demonstrable cytotoxic effects with long-lasting sequelae, and pathologists should be aware of the histopathologic findings that follow application of this solution. Wood and Severin (Ref. 4) suggest that ferric subsulfate may induce granulomas. These granulomas are rarely pigmented and must be differentiated histologically from pigmented neoplasms. Wood and Severin described a case in which a dermal nodule of atypical histiocytes (a macrophage present in connective tissue) developed at the site where ferric subsulfate solution had been applied to a wound 30 days earlier. Duray and Livolsi (Ref. 5) reported that the use of ferric subsulfate solution to achieve hemostasis at a biopsy site can also produce a clinically irregular area of hyperpigmentation accompanied by a pathologic pigmented and cellular dermal reaction. Davis, et al. (Ref. 6) mention the potential effect of ferric subsulfate solution obscuring the basic disease process in the uterine cervix.

Many uses of ferric subsulfate solution were discussed in the references submitted by the comment. However, questions remain concerning which procedures are safe and which are not. Standards for safety of OTC human drugs in § 330.10(a)(4)(i) (21 CFR 330.10(a)(4)(i)) include a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use as well as low potential for harm that may result from abuse under conditions of widespread availability. If ferric subsulfate is cytotoxic as suggested by Larson (Ref. 1), the question of long-term adverse effects for the patient remains unanswered.

The agency finds that permitting the use of ferric subsulfate only in external dermatologic applications would also

present difficulties. It is not clear from the references submitted how large a wound may be safely treated with ferric subsulfate solution. Although discoloration of the tissue sometimes results after using the product, there is no indication of the frequency or the severity of this problem. Without such information, the risk to the patient cannot be evaluated.

While ferric subsulfate solution has been in use for over 100 years, its iatrogenic effects (unfavorable response to medical intervention, induced by the intervention itself) have been recognized only recently (Refs. 2, 3, and 4). The agency does not have an adequate safety profile on this ingredient for the various uses suggested by the comment. The safety issues relevant to the product are not adequately addressed by the information provided.

The clinical effectiveness data provided were taken from the medical literature and involved situations where the product was applied by medically trained professionals (Refs. 7 through 32). The references do not provide any clinical information or data on which to base appropriate OTC drug labeling of the product for self-medication. Standards for effectiveness for OTC human drugs in § 330.10(a)(4)(ii) require controlled clinical investigations for proof of effectiveness, and specifically state that isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered. Further, § 330.10(a)(4)(iii) requires the benefit-to-risk ratio of a drug to be considered in determining its safety and effectiveness.

The references include case reports of the uses of ferric subsulfate solution but do not include any controlled clinical studies to show effectiveness. Because other recognized safe astringent products are available for OTC human use and potential risks are associated with the use of ferric subsulfate solution, the benefit-to-risk ratio for ferric subsulfate solution for general consumer use is unfavorable based upon current information. While ferric subsulfate solution may have utility as an astringent/hemostatic when used by health professionals, substantive clinical data are necessary to establish the proper safe and effective conditions for use.

Accordingly, the agency concludes that the data provided are not sufficient to support monograph status for ferric subsulfate solution as an astringent for OTC topical use by consumers or by health professionals. Therefore, ferric subsulfate is not included in this final

monograph. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Refs. 33 and 34).

Based on the lack of adequate safety and effectiveness data, the agency concludes that an oral hearing before the Commissioner is not warranted.

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 - (29) "Astringents," *Martindale, The Extra Pharmacopoeia*, 29th ed., The Pharmaceutical Press, London, pp. 777-778, 1989.
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 - (32) Epstein, E., "Monsel's Solution," *Journal of the American Academy of Dermatology*, 4:606, 1981.
 - (33) Letter from W. E. Gilbertson, FDA, to D. B. DeVogel, American Dermal Corp., coded LET1, Docket No. 78N-021A, Dockets Management Branch.
 - (34) Letter from W. E. Gilbertson, FDA, to D. B. DeVogel, American Dermal Corp., coded LET6, Docket No. 78N-021A, Dockets Management Branch.
- B. Comments on Hamamelis Water**
2. One comment requested that FDA consider the use of specifically denatured alternative preservatives in the manufacture of Hamamelis water. The comment stated that by using its own aromatic and hamamelitannin ingredients as denaturants in the manufacture of Hamamelis water, the preparation would be in compliance with Hamamelis water National Formulary (N.F.) XI. The comment

stated that the Bureau of Alcohol, Tobacco, and Firearms (BATF) should give it permission to use those alternative preservatives in the manufacture of Hamamelis water.

OTC drug monographs do not provide special exceptions to methods used to manufacture specific products. At the time that the tentative final monograph was published, Hamamelis water was not included in an official compendium. The agency's reference to "NF XI" in the tentative final monograph (54 FR 13490 at 13493) was intended to provide a standard for the preparation of Hamamelis water. Since that time, the United States Pharmacopeial Convention, Inc. (U.S.P.C.), has initiated development of a current compendial monograph for "Hamamelis water" (Refs. 1 and 2). The agency anticipates that a final monograph will be included in the United States Pharmacopeia (U.S.P.)—N.F. before the effective date of the final monograph for OTC astringent drug products. The proposed new U.S.P.—N.F. monograph is very similar to the former monograph in NF XI and provides a method of preparation. Accordingly, the final monograph for OTC astringent drug products in this document refers to the new U.S.P.—N.F. monograph for Hamamelis water.

The U.S.P.—N.F. provides under "General Notices" (Ref. 3) that a suitable formula of specially denatured alcohol may be substituted for alcohol in the manufacture of pharmacopeial preparations intended for internal or topical use, provided that the denaturant is volatile and does not remain in the finished product. It further states that a finished product that is intended for topical application to the skin may contain specially denatured alcohol, provided that the denaturant is either a normal ingredient or a permissible added substance. Any denatured alcohol used in the preparation of Hamamelis water would need to meet these requirements in order for the product to be marketed OTC in accordance with the final monograph in new part 347.

References

- (1) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3855, September through October 1992.
- (2) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 5266, May through June 1993.
- (3) "The United States Pharmacopeia XXII—The National Formulary XVII," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 3, 1989.

3. One comment requested that the agency reconsider and include in the final monograph several indications for use for Hamamelis water. The comment mentioned that these indications were not included in the agency's notice of proposed rulemaking, but had been recommended by the Miscellaneous External Panel in § 347.52(b)(2) of its advance notice of proposed rulemaking (47 FR 39436 at 39450 and 39451), as follows:

- (i) "For use as an astringent for the treatment of bruises, contusions, and sprains."
- (ii) "For protecting slight cuts and scrapes."
- (iii) "For relieving muscular pains."
- (iv) "For treating the pain and swelling of insect bites."
- (v) "For use as an astringent for the treatment of skin irritation, sunburn, and external hemorrhoids."

The comment also requested an oral hearing if necessary.

As discussed in the proposed rule for OTC astringent drug products (54 FR 13490 at 13497), the agency is not aware of any data to support the use of Hamamelis water as an astringent for "bruises," "contusions," "sprains," "sunburn," or "relieving muscular pains." The comment did not submit any new data to substantiate any of these claims. Therefore, the agency has no basis for including any of these indications in this final monograph.

Claims for using Hamamelis water for external hemorrhoids are covered in the rulemaking for OTC anorectal drug products. Indications for Hamamelis water products for that use are included in § 346.50(b) of the final monograph for OTC anorectal drug products (21 CFR 346.50(b)). Claims for insect bites, minor cuts, and minor scrapes were proposed in § 347.52(b)(3) of the tentative final monograph (54 FR 13490 at 13497) and appear in new § 347.50(b)(3) of this final monograph. Because the comment did not submit any substantive or new information to support the indications not included in this final monograph, the agency concludes that an oral hearing is not warranted.

II. Summary of Changes From the Proposed Rule

1. In the tentative final monograph the agency proposed to identify Hamamelis water as "NF XI." Now that a new U.S.P. monograph has been established, the agency is identifying Hamamelis water as "U.S.P." (See comment 2.)

2. The definition for an astringent drug product proposed in § 347.3(c) appears in new § 347.3(a) of this final monograph. The active ingredients proposed in § 347.12 appear in new

§ 347.10 of this final monograph. The labeling of astringent drug products proposed in § 347.52 appears in new § 347.50 of this final monograph.

III. The Agency's Final Conclusions on OTC Astringent Drug Products

Based on available evidence, the agency is issuing a final monograph establishing conditions under which OTC skin protectant drug products used as astringents are generally recognized as safe and effective and not misbranded. Specifically, the agency has determined that the only ingredients that meet monograph conditions are aluminum acetate, aluminum sulfate, and Hamamelis water. All other ingredients considered in this rulemaking have been determined to be nonmonograph. These ingredients include, but are not limited to, acetone, alcohol, alum ammonium, alum potassium, aluminum chlorhydroxy complex (aluminum chloride hexahydrate), aromatics, benzalkonium chloride, benzethonium chloride, benzocaine, benzoic acid, boric acid, calcium acetate, camphor (gum camphor), clove oil (oil of cloves), colloidal oatmeal, cresol, cupric sulfate, eucalyptus oil (oil of eucalyptus), eugenol, ferric subsulfate (Monsel's Solution), honey, isopropyl alcohol, menthol, methyl salicylate (oil of wintergreen), oxyquinoline sulfate, p-t-butyl-m-cresol (para-tertiary-butyl-meta-cresol), peppermint oil (oil of peppermint), phenol (carbolic acid), polyoxyethylene laurate (polyoxyethylene monolaurate), potassium ferrocyanide, sage oil (oil of sage), silver nitrate, sodium borate (borax), sodium diacetate, talc, tannic acid, tannic acid glycerite, thymol, topical starch (starch), zinc chloride, zinc oxide, zinc phenolsulfonate, zinc stearate, zinc sulfate. All of these ingredients except ferric subsulfate (Monsel's Solution) were listed as nonmonograph in § 310.545(a)(18)(ii) (21 CFR 310.545(a)(18)(ii)) in a final rule published in the *Federal Register* of May 10, 1993 (58 FR 27636 at 27642). Ferric subsulfate is being included in that same section in this final rule. Accordingly, any skin protectant drug product labeled, represented, or promoted for use as an OTC astringent that contains any of the ingredients listed in § 310.545(a)(18)(ii) or that is not in conformance with this final monograph (new part 347) is considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use

unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. An appropriate citizen petition to amend the monograph may also be submitted under 21 CFR 10.30 in lieu of an application. Any OTC skin protectant drug product for use as an astringent that is initially introduced or initially delivered for introduction into interstate commerce after the effective dates of § 310.545(a)(18)(ii) or this final rule that is not in compliance with the regulations is subject to regulatory action. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (51 FR 27346 at 27362, July 30, 1986). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the *Federal Register* of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC skin protectant drug products used as astringents, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC skin protectant drug products used as astringents is not expected to pose such an impact on small businesses. This final rule will require some relabeling of products containing monograph ingredients. Manufacturers will have 1 year to implement this new labeling. Nonmonograph ingredients except ferric subsulfate (Monsel's Solution) were addressed previously when § 310.545(a)(18)(ii) was published.

Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 347

Labeling, Over-the-counter drugs.

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

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. Section 310.545 is amended in paragraph (a)(18)(ii) by alphabetically adding the entry "Ferric subsulfate (Monsel's Solution)," by revising paragraph (d)(11), and by adding new paragraph (d)(22) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

- (a) * * *
(18) * * *
(ii) * * *

* * * * *
Ferric subsulfate (Monsel's Solution)

* * * * *
(d) * * *
(11) November 10, 1993, for products subject to paragraph (a)(18)(ii) of this section, except products that contain ferric subsulfate.

* * * * *
(22) April 21, 1993, for products subject to paragraph (a)(18)(ii) of this section that contain ferric subsulfate.

3. Part 347 is added as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—Astringent Drug Products

- Sec.
347.1 Scope.
347.3 Definitions.
347.10 Astringent active ingredients.
347.50 Labeling of astringent drug products.
Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

Subpart A—Astringent Drug Products

- § 347.1 Scope.
(a) An over-the-counter skin protectant drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.
(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

- § 347.3 Definitions.
As used in this part:
(a) Astringent drug product means a drug product that is applied to the skin or mucous membranes for a local and limited protein coagulant effect.
(b) [Reserved]

- § 347.10 Astringent active ingredients.
The active ingredient of the product consists of any one of the following within the specified concentration established for each ingredient:
(a) Aluminum acetate, 0.13 to 0.5 percent (depending on the formulation and concentration of the marketed product, the manufacturer must provide adequate directions so that the resulting solution to be used by the consumer contains 0.13 to 0.5 percent aluminum acetate).
(b) Aluminum sulfate, 46 to 63 percent (the concentration is based on the anhydrous equivalent).
(c) Hamamelis water, U.S.P.

- § 347.50 Labeling of astringent drug products.
(a) Statement of identity. The labeling of the product contains the established name of the drug, if any, and identifies the product as an "astringent."
(b) Indications. The labeling of the product states, under the heading "Indications" any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements describing only the indications for use that have been

established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) For products containing aluminum acetate identified in § 347.10(a). "For temporary relief of minor skin irritations due to" (select one or more of the following: "poison ivy," "poison oak," "poison sumac," "insect bites," "athlete's foot," or "rashes caused by soaps, detergents, cosmetics, or jewelry").

(2) For products containing aluminum sulfate identified in § 347.10(b) for use as a styptic pencil. "Stops bleeding caused by minor surface cuts and abrasions as may occur during shaving."

(3) For products containing Hamamelis water identified in § 347.10(c). (i) "For relief of minor skin irritations due to" (select one or more of the following: "insect bites," "minor cuts," or "minor scrapes").

(c) Warnings. The labeling of the product contains the following warnings under the heading "Warnings":

- (1) "For external use only. Avoid contact with the eyes."
(2) For products containing aluminum acetate identified in § 347.10(a) or hamamelis water identified in § 347.10(c). "If condition worsens or symptoms persist for more than 7 days, discontinue use of the product and consult a" (select one of the following: "physician" or "doctor").

(3) For products containing aluminum acetate identified in § 347.10(a) used as a compress or wet dressing. "Do not cover compress or wet dressing with plastic to prevent evaporation."

(d) Directions. The labeling of the product contains the following information under the heading "Directions":

- (1) For products containing aluminum acetate identified in § 347.10(a)—(i) For products used as a soak. "For use as a soak: Soak affected area in the solution for 15 to 30 minutes. Discard solution after each use. Repeat 3 times a day."
(ii) For products used as a compress or wet dressing. "For use as a compress or wet dressing: saturate a clean, soft, white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Discard solution after each use. Repeat as often as necessary."

(2) For products containing aluminum sulfate identified in § 347.10(b) for use as a styptic pencil. "Moisten tip of pencil with water and apply to the affected area. Dry pencil after use."

(3) For products containing hamamelis water identified in § 347.10(c). "Apply to the affected area as often as necessary."

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

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October 21, 1993

Federal Register

Part VII

**Department of
Health and Human
Services**

Food and Drug Administration

**21 CFR Part 328
Drug Products Intended for Oral
Ingestion That Contain Alcohol; Proposed
Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 328

[Docket No. 93N-0107]

Over-the-Counter Drug Products Intended for Oral Ingestion That Contain Alcohol

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish a maximum concentration limit for alcohol (ethyl alcohol) as an inactive ingredient in over-the-counter (OTC) drug products intended for oral ingestion (0.5 percent alcohol for children under 6 years of age, 5 percent alcohol for children 6 to under 12 years of age, and 10 percent alcohol for anyone 12 years of age and over). In addition, the proposal requires that the alcohol content be stated conspicuously or prominently on the principal display panel (front) of product labeling. FDA is issuing this notice of proposed rulemaking after considering recommendations from its OTC Drugs Advisory Committee (the Committee).

DATES: Written comments by January 19, 1994. Written comments on the agency's economic impact determination by January 19, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after the date of publication in the *Federal Register*.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855, 301-594-5000.

SUPPLEMENTARY INFORMATION: Alcohol is present as an inactive ingredient (e.g., solvent, preservative) in many different types of OTC drug products that are orally ingested: Analgesic, cough-cold, laxative, menstrual, and other drug products. The use of alcohol in those products has been discussed in several rulemakings for OTC drug products, with the majority of the discussion in the rulemaking for OTC cough-cold drug products.

I. Rulemaking for OTC Cough-Cold Drug Products

The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) took the position that medications administered to children should contain either a minimum amount of alcohol or none at all. (See the *Federal Register* of September 9, 1976, 41 FR 38312 at 38333.) The Panel concluded that alcohol in pediatric formulations should be maintained at the lowest possible concentration, that products should be formulated without alcohol if pharmaceutically possible, and that cough-cold drug products containing alcohol greater than 10 percent weight-to-weight should not be given to children under 6 years of age except under the advice and supervision of a physician.

Subsequently, FDA asked the American Academy of Pediatrics Committee on Drugs (AAP/CD) to evaluate the use of alcohol in OTC drug products for children. The AAP/CD stated that ideally medicinal products intended for use in children should contain no alcohol. However, if alcohol is required to solubilize the active ingredients in a product intended for use in children, the AAP/CD made the following recommendations to FDA: (1) OTC liquid preparations should be limited to a maximum of 5 percent volume-to-volume alcohol, (2) physician supervision is suggested for children less than 6 years of age who use OTC preparations containing alcohol, (3) the amount of alcohol contained in any medicinal preparation should not be capable of producing a blood alcohol concentration greater than 25 milligrams (mg) per 100 milliliters (mL) after a single recommended dose, (4) appropriate intervals between doses should be prescribed to prevent the accumulation of blood alcohol, (5) the packaged volume of alcohol-containing products should be kept to a reasonable minimum to prevent potential lethal ingestions, and (6) safety closures should be used for medications with greater than a 5-percent alcohol content (Ref. 1). The AAP/CD concluded that pediatricians and other health care providers should be aware of the widespread presence of alcohol in liquid medications and its potential toxicity. The AAP/CD recommended that continued efforts be made to remove alcohol from liquid preparations intended for children.

In the tentative final monograph for OTC cough-cold combination drug products, the agency stated that it was considering adopting the AAP/CD

recommendations and invited public comment. (See the *Federal Register* of August 12, 1988, 53 FR 30522 at 30528 and 30529.) The agency cited data in support of the proposition that alcohol depresses the central nervous system over a wide range of doses, that threshold effects are observed at blood levels of 20 to 50 mg per 100 mL, and that a detectable impairment of vision occurs at a blood level of about 15 mg per 100 mL (Ref. 2).

In response, the Nonprescription Drug Manufacturers Association (NDMA) objected to many of the AAP/CD recommendations. NDMA contended that alcohol has a number of legitimate uses in formulating OTC drug products, that it: (1) Enhances flavor, (2) provides palatability to distasteful ingredients, especially those extracted from natural sources, (3) acts as an effective preservative against microbial growth and chemical change, (4) enhances the antimicrobial potency of other preservatives that may be needed in a product, (5) maintains stability more effectively with less added volume than water-miscible alternatives, and (6) is less toxic than most alternative solvents. NDMA contended that AAP/CD's recommendation of a 5-percent alcohol limit is unduly restrictive in relation to the dose and package volumes of current OTC drug products. NDMA concluded that the alcohol limit proposed by AAP/CD would not appear to offer greater safety to children when OTC drug products are taken at recommended doses or accidentally ingested.

The agency subsequently received letters from groups concerned about the presence of alcohol in OTC drug products (Refs. 3, 4, and 5). The American Psychiatric Association (Ref. 3) suggested that the agency minimize the alcohol content in medicines. The National Council on Alcoholism and Drug Dependence, Inc. (Ref. 4) stated that drug products should contain only the amount of alcohol that is minimally necessary, as determined solely by the physical and chemical characteristics of the medication. The Consumer Protection Board of the State of New York (Ref. 5) urged the agency to determine whether manufacturers of alcohol-containing OTC drug products could obtain the same results without the use of alcohol.

The subject of alcohol in OTC drug products was also discussed in the final monograph for OTC antihistamine drug products (57 FR 58356, December 9, 1992). This monograph includes warnings in § 341.72(c)(3) (21 CFR 341.72(c)(3)) that advise consumers to avoid alcoholic beverages while taking

products containing any of the following antihistamines: Brompheniramine maleate, chlorcyclizine hydrochloride, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, diphenhydramine citrate, diphenhydramine hydrochloride, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride. Those warnings advise that the product may cause drowsiness and that alcohol may increase the drowsiness effect.

II. The OTC Drugs Advisory Committee Meeting

Because of the concerns discussed above, the agency asked its OTC Drugs Advisory Committee to advise the agency on the appropriate alcohol content of OTC drug products. On December 17, 1992 (Ref. 6), the Committee was presented information on the following topics: Types of OTC drug products that contain alcohol, the pharmaceutical role of alcohol, the pharmacokinetics and pharmacodynamics of alcohol, numerous safety issues concerning alcohol and its use in OTC drug products, possible alcohol content limitations, and nonalcohol formulation alternatives. The Committee considered the benefits and risks of alcohol in OTC drug products and whether limits should be placed on the alcohol concentration in these products. The Committee discussed the bases for alcohol content limitations and sought to determine whether there should be differences in requirements for products intended to be used by consumers of different ages: (1) Under the age of 6 years, (2) age 6 to under 12 years, (3) for adult use (over 12), and (4) for use by the elderly. The Committee considered whether alcohol in OTC drug products contributes significantly to alcohol abuse, what effect it has on alcoholics and children of alcoholics, and what specific actions could be recommended to reduce any risks. The Committee also addressed the pharmaceutical uses of alcohol in OTC drug products and possible alternative solvents or vehicles.

A transcript (Ref. 6) containing the various presentations and the Committee's discussion is on public display in the Dockets Management Branch (address above). A summary of the presentations and discussion follows.

Alcohol has been well recognized as a pharmaceutical excipient and is most commonly used as a solvent in the formulation of oral drug products.

Certain drugs are insoluble in water and must be delivered in an alternate vehicle. Alcohol is the preferred solvent because of its high relative ability to dissolve many water-insoluble ingredients, including flavors used in OTC drug products. Alcohol is also used with other solvents, such as glycols and glycerin, to reduce the amount of solvent needed in a product. Alcohol increases the antimicrobial activity of glycol solvents. Alcohol is also used as a preservative to ensure stability, and as a copreservative in conjunction with parabens, benzoates, sorbates, or ethylenediaminetetraacetic acid to broaden and enhance the antimicrobial activity of the preservative system. For example, alcohol shows less pH dependency than the benzoates and parabens and, as a copreservative, makes antimicrobial activities of parabens and benzoates less dependent on the product's pH. Thus, the alcohol-benzoate or alcohol-paraben preservative system can be used in a broader range of products than benzoate or paraben preservatives alone. At a 10-percent concentration, alcohol prevents inactivation of parabens by nonionic surfactants.

Although alcohol offers certain advantages in formulation, as discussed above, one Committee member noted that it is not an absolute pharmaceutical necessity. Glycerin, polyethylene glycol, and propylene glycol can be used as substitutes. However, these other ingredients lack the solvent power of alcohol. Polyethylene glycol and propylene glycol are on FDA's Generally Recognized As Safe (GRAS) list of food additive ingredients. However, ingestion of large amounts of propylene glycol has resulted in lactic acidosis (increased blood lactic acid concentrations). Also, when propylene glycol is eliminated from the body, isopropyl alcohol is a metabolic byproduct. When excess amounts of glycerin are ingested, hyperosmolar nonketotic coma, diabetic acidosis, pulmonary edema, and minor symptoms of headache, nausea, vomiting, and dizziness can occur.

The pharmacokinetics and pharmacodynamic effects of alcohol were discussed by the Committee. Alcohol at significant blood concentration levels exhibits zero order (or saturable) pharmacokinetics, i.e., the quantity of alcohol elimination per unit of time is constant and is not proportional to the concentration of alcohol in the body. Alcohol does not have a defined half-life because the half-life changes according to the quantity of alcohol remaining in the body. The amount of alcohol does not decrease by a constant fraction per unit time, but

decreases by a constant amount per unit time. Zero order pharmacokinetics can create a blood alcohol concentration that is no longer proportional to the dose, i.e., a small increase in dose may have a large increase in the blood alcohol concentration. One Committee member stated that several studies have shown that there is little difference in alcohol pharmacokinetics for the geriatric population. Also, there is insufficient scientific data in the literature to demonstrate the pharmacokinetics of alcohol in the pediatric population.

In acute alcohol intoxication, lactic acidosis develops, with hypoglycemia occurring in some people. These effects pose a serious toxicologic problem, especially in children who consume alcohol-containing products. The principal action of alcohol is central nervous system depression. As increasing levels of depression occur, changes in perception and motor incoordination occur and, finally, coma and loss of dependent reflexes can occur. Different effects occur as the blood alcohol concentration increases: At 50 mg per deciliter (dL), some motor function impairment occurs; at about 80 mg per dL, the motor impairment becomes very evident; at about 200 mg per dL, significant central nervous system depression occurs; at 400 mg per dL, respiratory failure can occur. Death can occur due to respiratory failure or as a result of pulmonary aspiration of gastric contents.

Individuals can vary greatly in their sensitivity to alcohol, i.e., in the concentration that produces a particular intensity of effect. Individuals who have developed a tolerance to alcohol will experience a less intense effect at a particular concentration than normal, nontolerant individuals.

Other effects of alcohol are cutaneous vasodilation (a relatively small effect on the cardiovascular system), withdrawal syndrome, stimulation of gastric acid secretion, and stomach irritation. Alcohol is a teratogen. Fetal alcohol syndrome has been well described in babies of women who consume large amounts of alcohol during certain stages of pregnancy.

A number of studies have correlated alcoholism with age, sex, race, drinking pattern, socioeconomic status, family history, genetic factors, environmental factors, consumption, and cirrhosis mortality and morbidity. A large number of case reports on hepatic and renal injury have involved simultaneous use of alcohol and OTC drugs, particularly acetaminophen. Large doses of acetaminophen (greater than recommended in labeling) taken with

alcohol can produce potentially fatal hepatic and renal necrosis. Data from studies in monkeys suggest that alcohol increases the reinforcing effects of other drugs in terms of implications for human behavior and increased liability for abuse. Alcoholics are known to drink mouthwashes that contain alcohol, and it is not unusual for individuals in addiction treatment

programs to use OTC medications that are formulated with alcohol as a source of alcohol.

Children's exposure to medicines having a high alcohol content raises special concerns. However, one Committee member noted that there are little data on the use of alcohol in children, probably because alcohol intake is not legal in children or in

young adults under 18 to 21 years of age. In March 1984, the AAP/CD (Ref. 1) established that a child's blood alcohol concentration should not exceed 25 mg per dL following a single dose of alcohol-containing medication. The AAP/CD estimated the volumes (mL) of alcohol preparations predicted to produce a blood alcohol concentration of 25 mg/dL in different aged children, as stated in the following chart:

ESTIMATED VOLUMES (ML) OF ALCOHOL PREPARATION REQUIRED TO PRODUCE A BLOOD ALCOHOL CONCENTRATION OF 25 MG PER DL

Percent absolute ethanol (v/v) in product	Age (weight)					
	2 yr (12 kg)	4 yr (16 kg)	6 yr (21 kg)	8 yr (27 kg)	10 yr (32 kg)	12 yr (38 kg)
2.5	91	122	160	205	243	289
5.0	46	61	80	103	122	144
7.5	30	41	53	68	81	96
10.0	23	30	40	51	61	72
12.5	18	24	32	41	49	58
20.0	11	15	20	26	30	36
25.0	9	12	16	21	24	29

These figures are based on data taken from adults and, therefore, are strictly hypothetical with respect to children. Nonetheless, after this paper was published, many manufacturers voluntarily reduced the amount of alcohol in their products. The AAP/CD report did not endorse the use of alcohol in orally ingested OTC drug products intended for use in children. The report stated that it was desirable to have no alcohol in medicinal products intended for use in children and recommended that a continued effort be made to remove alcohol from these products.

It was noted by one Committee member that the concentration of alcohol in OTC drug products was not as much a concern as the palatability of the product and the willingness of a child to take the product. Once ingested, alcohol's effects are the same regardless of the source or vehicle. Between 1987 and 1991, 17,000 cases of ingestion of alcohol-containing mouthwashes were reported to poison control centers, with 39 cases experiencing major (life-threatening) effects. Several of these cases involved children, and there were four deaths, including one child. Out of 145,000 reported incidents involving alcohol in perfume, cologne, and aftershave, only 14 cases were classified as major, with no deaths reported.

According to NDMA, reports from the American Association of Poison Control Centers National Data Collection System showed no deaths in children less than 6 years of age due to accidental ingestion of alcohol-containing OTC drug products intended for oral ingestion. Data from poison control

centers do not indicate a widespread acute intoxication problem from the accidental ingestion of alcohol in OTC drug products. For example, in a study monitored by the Maryland Poison Control Center, covering the period from June 1989 to June 1992, there was no major difference in adverse effects between products containing alcohol (10 to 25 percent) and alcohol-free products. No deaths, major effects, or moderate effects were reported. Most ingestions involving products containing alcohol were in the 2 ounce (oz) range, with the maximum ingestion reported being 4 oz in a slightly older child.

A representative from Canada stated that manufacturers of pediatric medications marketed in Canada are encouraged to use other suitable solvents, and they are required to justify the use of alcohol. When use can be justified, the concentration of alcohol should not exceed 5 percent volume-to-volume, with the amount of alcohol contained in the product not capable of producing a blood concentration greater than 25 mg per dL per dose, when taken as directed.

NDMA proposed to the Committee the following alcohol concentration limits for OTC monographed drug products intended for oral ingestion: 10 percent alcohol volume-to-volume for adults and children ages 12 and over, except in cases where higher concentrations of alcohol must be used (e.g., plant extracts); up to 5 percent volume-to-volume for children 6 to under 12 years of age, and alcohol-free products (defined as less than 0.5 percent

alcohol) for children under 6 years of age (Ref. 7). These limits would be implemented by the OTC drug industry on a voluntary basis. The NDMA program also includes current agency required warnings (such as for antihistamines, as discussed above) and additional direction statements for OTC alcohol-containing drug products. According to NDMA, directions for use of products containing between 5 and 10 percent alcohol should convey that physician supervision is recommended for children under 12 years of age. For pediatric products with an alcohol concentration above 0.5 percent, directions for use should state that supervision of a physician is recommended for children under 6 years of age. NDMA member companies with affected OTC drug products intend to make these changes "as soon as practicable," with the goal of voluntary compliance for reformulating and labeling to the new 5- and 10-percent alcohol limitations targeted for November 1993. The goal for the reformulation and labeling of alcohol-free OTC drug products is December 1994.

Reference was made to the Cough-Cold Panel's recommendation that products containing alcohol 10 percent weight-to-weight, equivalent to about 12 to 13 percent volume-to-volume, not be given to children under 6 years of age, except under the advice and supervision of a physician. NDMA concluded that its proposed maximum alcohol concentration of 10 percent volume-to-volume is more conservative than that recommended by the Cough-Cold Panel.

The Committee members concluded that OTC drug products for oral ingestion should not contain more than the minimum amount of alcohol needed as a solvent for the active ingredient, for preservative purposes, or for taste enhancement.

The Committee agreed with NDMA's recommendations as follows:

1. For persons 12 years of age and above, a maximum alcohol concentration up to and including 10 percent volume-to-volume. (While the Committee members could not identify any specific data that showed a difference in safety between 5 and 10 percent concentrations of alcohol in products, they generally preferred that a lower concentration, closer to 5 percent, be used whenever possible.)

2. For children age 6 to under 12, a maximum alcohol concentration up to and including 5 percent volume-to-volume. (However, the Committee stated that a lower concentration, closer to 0.5 percent, should be used whenever possible.)

3. For children under 6 years of age, a maximum alcohol concentration up to and including 0.5 percent volume-to-volume.

The Committee recognized that metabolism and toxicity data in children under 12 years of age were lacking, but decided that these recommendations were reasonable and the best guidelines to follow at this time. For products intended for use in children under 6 years of age, the Committee recommended that only products containing no alcohol be labeled "alcohol free." Some Committee members felt that all products for use in children under 12 years of age should be alcohol free because a number of these products have been reformulated to remove the alcohol, which suggests that no alcohol is needed for the formulation of these products.

The Committee concluded that the only exception to the 10 percent maximum alcohol concentration should be those products that cannot be formulated with a 10 percent or lower alcohol concentration (e.g., plant extracts). The Committee recommended that such products obtain a special exemption from FDA based upon suitable justification.

The Committee also discussed where the alcohol content should be disclosed in the product's labeling, e.g., the principal display panel (front) or the product information panel (not usually the front). Several Committee members, who felt that the information should be conspicuous, favored placement of this information on the principal display

panel. However, no formal vote was taken on this issue.

III. The Agency's Tentative Conclusions on the Committee's Recommendations

The agency agrees with the Committee's recommendations to limit the use of alcohol in OTC drug products. The agency has considered whether such limits should be voluntary, as suggested by NDMA. The agency is aware that a voluntary program may not involve all OTC drug manufacturers and their products. Further, a voluntary program would not be enforceable by the agency. Therefore, the agency is proposing that alcohol limitations and related labeling requirements for all OTC drug products intended for oral ingestion be implemented by regulation. These regulations would apply to OTC drug products regulated under the monograph system (21 CFR parts 330 to 358), and those approved under new drug applications.

The agency concurs with the Committee that OTC drug products for oral ingestion should not contain more than the minimum amount of alcohol needed as a solvent for the active ingredient, for preservative purposes, or for taste enhancement. In keeping with public health goals, the agency strongly encourages the lowest amount of alcohol necessary for pharmaceutical purposes to be used. Lower concentrations would help limit potential misuse of products for their alcohol content and reduce undesirable alcohol ingestions by adolescents. Therefore, a 5-percent alcohol concentration limit is preferred, even though no specific data have been presented to demonstrate a difference in safety between 5 and 10 percent alcohol in OTC drug products intended for oral ingestion.

However, in this document, based on the Committee's concurrence with NDMA's proposal for OTC drug products intended for oral ingestion that contain alcohol, the agency is proposing: (1) A 10-percent alcohol limit for OTC drug products intended for adults and children 12 years of age and over, (2) a 5-percent alcohol limit for OTC drug products intended for children 6 to under 12 years of age, and (3) a 0.5-percent alcohol limit for OTC drug products intended for children under 6 years of age. The agency invites specific comment on the proposed 10-percent maximum alcohol concentration, including specific data and reasons that might support lowering this concentration to a 5-percent limit.

The agency notes that NDMA suggested that products containing up to

0.5 percent alcohol be called "alcohol free." However, this designation would be misleading because it infers that the product contains no alcohol whatsoever. Individuals taking an alcohol-deterrent medication, such as disulfiram, could suffer untoward reactions by ingesting an alcohol-containing drug product labeled as "alcohol free" that actually contained a small amount of alcohol. Therefore, the agency is proposing that the term "alcohol free" mean that the product contains no alcohol at all. The agency also invites specific comment on this labeling term.

The agency agrees with the NDMA suggestion (see Section II of this document) that products containing alcohol include additional directions regarding supervised use by a physician when the product is used in children below a certain age. However, it is possible that these age limitations based on alcohol content may differ from age limitations based on other ingredients contained in the product that are included in an OTC drug monograph. Therefore, the agency is including a provision in the proposed regulation that if age limitation statements differ, the direction referring to the higher age limitation should be used. For example, for an OTC drug product containing the antihistamine ingredient diphenhydramine hydrochloride and 10 percent alcohol, the antihistamine monograph requires labeling for diphenhydramine products to advise users to consult a physician for use in children under 6 years of age. The proposed alcohol regulation would require the labeling direction to consult a physician for use in children under 12 years of age for products containing between 5 and 10 percent alcohol. In this case, the direction for the higher age limitation (i.e., to consult a physician for use in children under 12 years of age) would be required in the product's labeling, and the labeling could not include directions for children age 6 to under 12. A provision to use this higher age-limitation labeling is being included in the proposed regulation.

The agency has considered where the alcohol content of a product should be stated in labeling. The agency believes that consumers need to know this information when they purchase the product. The agency is concerned that consumers do not necessarily read all of a product's labeling at the time of purchase. The agency believes that the product's alcohol content should be prominently and conspicuously displayed in the product's labeling, and that this information should be readily available and visible to consumers at the time of purchase. Therefore, the agency

is proposing that this information appear on the front (principal) display panel of the product's labeling and that the information be in a size reasonably related to the most prominent printed matter on that panel. In addition, some manufacturers are presently placing the term "alcohol free" on their products' principal display panel and will likely do so for new or revised products containing no alcohol. Therefore, to facilitate comparison, the agency believes that the alcohol content of products containing alcohol should also appear on the principal display panel. Further, because section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) requires that the quantity, kind, and proportion of alcohol be stated on a drug product's label, the alcohol content will also need to appear on the immediate container label when the immediate container (e.g., a glass bottle) is marketed in another retail package, e.g., an outer box. This dual labeling of alcohol content will be beneficial should a consumer discard the outer package. The agency invites specific comment on the location of this information in OTC drug product labeling, particularly from consumers who have an interest in this type of information.

The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after the date of publication in the *Federal Register*. Based on the time that this is likely to occur, the effective date would be consistent with NDMA's goals for its voluntary program, which are November 1993 for the reformulation and labeling of affected OTC drug products to the new 5- and 10-percent alcohol limitations, and December 1994 for the reformulation and labeling of alcohol-free OTC drug products.

If the agency determines that any condition included in the final regulation should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular condition not in conformance with the final regulation, a shorter deadline may be set for removal of that condition from OTC drug products. The agency encourages manufacturers to implement voluntarily the provisions of this proposed rule at their earliest convenience.

Within the OTC drug product marketplace, the agency is not aware of a significant number of products that would be affected due to their alcohol content as an inactive ingredient. Products that would be affected consist of a limited number of OTC liquid cough-cold, internal analgesic, and

laxative drug products. Therefore, the agency concludes that the economic impact of this proposed rule, if implemented, would be minimal and that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products intended for oral ingestion that contain alcohol as an inactive ingredient. Types of impact may include, but are not limited to, costs associated with reformulating, product (stability) testing, repackaging, and relabeling. Comments regarding the impact of this rulemaking on OTC drug products intended for oral ingestion that contain alcohol as an inactive ingredient should be accompanied by appropriate documentation. A period of 90 days from the date of publication of this proposed rulemaking in the *Federal Register* will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before January 19, 1994, submit to the Dockets Management Branch (address above) written comments on the proposed amendment and on the agency's economic impact determination. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) American Academy of Pediatrics, Committee on Drugs, "Ethanol in Liquid Preparations Intended for Children," *Pediatrics*, 73:405-407, 1984.

(2) Maling, H.M., "Toxicology of Single Doses of Ethyl Alcohol," in *International Encyclopedia of Pharmacology and Therapeutics*, Pergamon Press, Elmsford, NY, 2:227-299, 1970.

(3) Letter from M. Sabshin, Medical Director, American Psychiatric Association to FDA, July 28, 1992.

(4) Letter from P. Wood, National Council on Alcoholism and Drug Independence, Inc., to FDA, July 30, 1992.

(5) Letter from R.M. Kessel, State of New York Consumer Protection Board to FDA, July 12, 1991.

(6) Transcript of Open Proceedings of OTC Drugs Advisory Committee, December 17, 1992.

(7) Alcohol Content Limitation for Monograph'd OTC's Intended for Oral Ingestion, Nonprescription Drug Manufacturers Association, presented at OTC Drugs Advisory Committee meeting, December 17, 1992.

List of Subjects in 21 CFR Part 328

Alcohol, Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations be amended to add part 328 as follows:

PART 328—OVER-THE-COUNTER DRUG PRODUCTS INTENDED FOR ORAL INGESTION THAT CONTAIN ALCOHOL

Subpart A—General Provisions

Sec.
328.1 Scope.
328.3 Definitions.

Subpart B—Ingredients

328.10 Alcohol.

Subpart C—Labeling

328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

Authority: Secs. 201, 301, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 371).

Subpart A—General Provisions

§ 328.1 Scope.

Reference in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 328.3 Definitions.

As used in this part:

(a) *Alcohol* means the substance known as ethanol, ethyl alcohol, or Alcohol USP.

(b) *Inactive ingredient* means any component of a product other than an active ingredient as defined in § 210.3(b)(7) of this chapter.

Subpart B—Ingredients

§ 328.10 Alcohol.

(a) Any over-the-counter (OTC) drug product intended for oral ingestion shall not contain alcohol as an inactive ingredient in concentrations that exceed those established in this part, unless a specific exemption, as provided in paragraph (e) of this section, has been approved.

(b) For any OTC drug products intended for oral ingestion and labeled for use by adults and children 12 years of age and over, the amount of alcohol in the product shall not exceed 10 percent.

(c) For any OTC drug product intended for oral ingestion and labeled for use by children 6 to under 12 years of age, the amount of alcohol in the product shall not exceed 5 percent.

(d) For any OTC drug product intended for oral ingestion and labeled for use by children under 6 years of age, the amount of alcohol in the product shall not exceed 0.5 percent.

(e) The Food and Drug Administration will grant an exemption from paragraphs (b), (c), and (d) of this section where appropriate, upon petition under the provisions of § 10.30 of this chapter. Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented in the petition. Decisions with respect to requests for exemption

shall be maintained in a permanent file for public review by the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

Subpart C—Labeling

§ 328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

(a) The amount (percentage) of alcohol present in a product shall be stated in terms of percent volume of absolute alcohol at 60 °F (15.56 °C) in accordance with § 201.10(d)(2) of this chapter.

(b) A statement expressing the amount (percentage) of alcohol present in a product shall appear prominently or conspicuously on the "principal display panel," as defined in § 201.60 of this chapter. For products whose principal display panel is on the immediate container label and that are not marketed in another retail package (e.g., an outer box), the statement of the percentage of alcohol present in the product shall appear prominently or conspicuously on the "principal display panel" of the immediate container label.

(c) For products whose principal display panel is on the retail package and the retail package is not the immediate container, the statement of the percentage of alcohol present in the product shall also appear on the immediate container label; it may appear anywhere on that label in accord with section 502(e) of the Federal Food, Drug, and Cosmetic Act.

(d) The statement expressing the amount (percentage) of alcohol present in the product shall be in a size reasonably related to the most prominent printed matter on the panel or label on which it appears, and shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

(e) For a product to state in its labeling that it is "alcohol free," it must contain no alcohol (0 percent).

(f) For any OTC drug product intended for oral ingestion containing over 5 percent alcohol and labeled for use by adults and children 12 years of age and over, the labeling shall contain the following statement in the directions section: "Consult a physician for use in children under 12 years of age."

(g) For any OTC drug products intended for oral ingestion containing over 0.5 percent alcohol and labeled for use by children ages 6 to under 12 years of age, the labeling shall contain the following statement in the directions section: "Consult a physician for use in children under 6 years of age."

(h) When the direction regarding age in paragraph (f) or (g) of this section differs from an age-limiting direction contained in any OTC drug monograph in this chapter, the direction containing the higher age limitation shall be used.

Dated: July 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-25836 Filed 10-20-93; 8:45 am]

BILLING CODE 4160-01-P

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Federal Register

**Thursday
October 21, 1993**

Part VIII

**Environmental
Protection Agency**

40 CFR Part 195

**Radiation Site Cleanup Regulations;
Advance Notice of Proposed Rulemaking**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 195

[FRL-4792-81]

Radiation Site Cleanup Regulations

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is developing regulations that will set forth requirements for cleanup levels for sites contaminated with radionuclides. These regulations will be designed to protect human health and the environment from exposure to ionizing radiation, and will be applicable to sites contaminated with radioactive material subject to the Atomic Energy Act (AEA) and to sites covered under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (i.e., Superfund sites), including but not limited to Federal facilities.

The purpose of this action is to solicit general comments, information and data that are applicable to the broad issues identified in the Supplementary Information section and which will shape the overall scope and direction of this rulemaking. In addition to this early request for input, EPA will announce additional opportunities for public participation as this rulemaking progresses.

In a separate rulemaking, EPA will also develop regulations for the management and disposal of radioactive waste generated during site remediation and will explore the feasibility of recycling or reusing site structures, equipment, and metals after cleanup. Comments on waste management and recycle/reuse issues are also being solicited at this time. However, it is important to note that the current rulemaking effort focuses on development of the radiation site cleanup regulations.

DATES: Comments and information are requested on or before December 20, 1993.

ADDRESSES: Comments should be submitted, in duplicate, to the docket clerk at the following address: U.S. Environmental Protection Agency, Mail Stop LE-131, Air Docket No. A-93-27, room M-1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460. The Docket is open from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. A

reasonable fee may be charged for copies of docket material.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Hostage, Chief, Radiation Studies Branch, Radiation Studies Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 233-9237.

SUPPLEMENTARY INFORMATION: On June 18, 1986, EPA published an Advance Notice of Proposed Rulemaking (ANPR) titled "Radiation Protection Criteria for Cleanup of Land and Facilities Contaminated with Residual Radioactive Materials" (51 FR 22264). Many of the issues and discussions presented in the 1986 ANPR are similar to those considered in the current rulemaking effort and may be consulted for additional background information.

Statutory Authority

Under the Atomic Energy Act (42 U.S.C. 2201/AEA 161; 42 U.S.C. 2021/AEA 274) and Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix 1), EPA is authorized to develop Federal guidance and regulations to protect public health and the environment from the effects of radiation. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) authorizes the President to take response action whenever there is a release or threat of a release of hazardous substances, which includes radionuclides.

Current Approach to Site Cleanup

Progress to date in cleaning up radiation sites has, in general, been limited and slow. The total number of sites eventually requiring cleanup may number in the thousands and may cost hundreds of billions of dollars to remediate. In the absence of promulgated standards that specifically address cleanup requirements, the majority of these sites have been and continue to be cleaned up using a variety of criteria. EPA believes that the lack of specific cleanup standards has led to confusion and public concern, increased costs with marginal increases in protection levels, and delays in accomplishing necessary cleanups.

Proposed Regulatory Strategy

The Agency recognizes that the selection of a regulatory approach and the choice of cleanup levels involve many difficult technical and policy decisions with wide-ranging economic and environmental implications. EPA believes that the development of regulations that specifically address cleanup requirements will assist in ensuring that radioactively

contaminated sites are cleaned up in a consistent, protective and cost-effective manner. To this end, EPA is proposing a comprehensive regulatory strategy. As an initial step in this strategy, the Agency is developing cleanup levels for soil and groundwater contaminated with radionuclides. These will correspond to an acceptable risk limit and may be based on different land use scenarios, such as residential or commercial/industrial use. EPA is currently exploring several different approaches for deriving these levels and has not yet selected a specific approach or type of regulation (or a combination).

As future steps in the regulatory strategy, EPA will develop waste management regulations that will include standards for the handling and disposal of radioactive waste generated during cleanup. As a component of this, EPA will also examine the feasibility of recycling or reusing site structures, equipment and metals contaminated with low levels of radioactivity after cleanup. EPA is not including the development of waste management regulations in its current rulemaking effort on radiation site cleanup regulations. The waste management regulations will be developed in a separate rulemaking.

Cleanup Issues Under Consideration

To assist in shaping its regulatory strategy for cleanup, EPA has prepared an Issues Paper to present issues, alternative regulatory approaches, and preliminary analyses that are relevant to the development of radiation site cleanup regulations. A copy of this paper may be obtained by calling the Superfund/RCRA Hotline at 1-800-424-9346 (TDD 1-800-553-7672). In the Washington DC area, dial 703-412-9810. Interested parties can also contact the Cleanup Regulation Electronic Bulletin Board at 1-800-700-STDS (dial 703-790-0825 in the Washington, DC area) for information on rulemaking activities and available documents.

Currently, EPA is evaluating several important issues related to the cleanup regulations, including but not limited to the following:

A. Level of Protection

What level or levels of risk should the proposed regulation(s) achieve to ensure protection of human health and the environment after cleanup? Should the level apply to a maximally exposed individual, the average member of the most exposed group, or to some other entity? Should there be different levels of cleanup for different land use scenarios? Should members of future generations be protected at the same

level as members of the current generation?

B. Consistency with Existing Regulations

In what manner and to what degree should the proposed cleanup regulation(s) be consistent with existing Federal, state, and local cleanup statutes, regulations, requirements, and guidance?

C. Regulatory Approaches and Type of Regulation(s)

What regulatory approaches should be considered? Should the proposed regulation(s) include a single dose or risk limit, or a range of limits? Should the regulations contain a table or tables of default media- and radionuclide-specific concentration limits based on generic site conditions? Should the regulation(s) correspond to site-specific concentration limits derived from an Agency-approved pathways model based on actual site conditions? Should the proposed regulation(s) be technology-based linked to an acceptable risk level?

D. Practicality Issues

How should the availability, development, advantages and limitations of current remediation technologies, fate and transport models, exposure and risk assumptions, detection limits, and site characterization techniques be considered? How should cleanup costs and financial responsibilities be assessed? What weight should be placed on these considerations in developing the regulation(s), and in what order of importance should they be addressed? What liability issues arise? How can pollution prevention considerations be incorporated?

E. NARM/NORM Issues

Should naturally occurring and accelerator-produced radioactive material (NARM), and in particular diffuse naturally occurring radioactive materials (NORM), be included in the proposed cleanup regulation(s)? If so, how should they be included? What is the current nature and extent of NORM contamination at Superfund sites and Federal facilities? Would future legislation be useful and, if so, what legislation would be most effective in regulating the cleanup of NORM sites? How would Federal NORM requirements affect existing state regulations?

F. Mixed Waste Issues

Should mixed AEA radioactive and Resource Conservation and Recovery Act (RCRA) hazardous waste be

addressed in the regulation(s)? Should the regulation(s) address only the radioactive component of the waste? What is the current nature and extent of mixed waste contamination at Superfund sites and, in particular, at Federal facilities?

EPA is also considering a number of waste management and recycle/reuse issues that may have a significant impact on the development of the cleanup regulations:

A. Waste Management Issues

How should the management of radioactive waste generated during cleanup be addressed? Should separate rules and guidance be developed to deal with waste handling, treatment, storage, transportation, and disposal activities? How should the availability of waste disposal sites and their capacities be factored into decisions concerning protection level(s) of the regulation(s)? How should the corresponding volumes of waste and cleanup costs anticipated with each protection level be considered? Given the potential inadequacy of existing licensed disposal sites to accommodate the volumes of radioactive waste anticipated from cleanups, should one waste management option be partial site cleanups with above-ground onsite retrievable storage? Should another waste management option be the cleanup and consolidation of wastes from multiple sites with the storage or disposal of these wastes at another contaminated site? How should NORM and mixed radioactive and nonradioactive hazardous wastes be addressed?

B. Recycle/Reuse Issues

Should decontaminated structures, equipment, and metal be reused or recycled? What level or levels of residual radioactivity contamination should be set for these materials, and how should the level(s) be established? How would these materials be used and what potential public health impacts would they pose? What potential liabilities exist for future distributors or sellers of these materials, and what notice to buyers should be required?

Coordination With Interested Parties

EPA is committed to moving forward with the rulemaking expeditiously while coordinating with all interested parties, as follows:

A. Public Participation

EPA strongly encourages public participation throughout the rulemaking process to ensure that all interests are adequately represented. EPA will

provide opportunities for the public to review and comment on supporting rulemaking documents.

B. NACEPT

EPA is establishing a subcommittee under the auspices of the National Advisory Council for Environmental Policy and Technology (NACEPT). Chartered under the Federal Advisory Committee Act, NACEPT provides extramural environmental policy information and advice to the Administrator of EPA and other Agency officials. Membership of this subcommittee will consist of individuals from a wide variety of governmental agencies, industry, and public interest groups so as to ensure a balanced representation.

C. Other Interested Parties

EPA will also coordinate with the following groups: other Federal agencies; state and local governmental agencies; Indian Nations; environmental groups; and industry and trade associations.

Relationship of EPA Cleanup Standards to NRC Decommissioning Standards

On March 16, 1992, EPA and the Nuclear Regulatory Commission (NRC) signed a Memorandum of Understanding (MOU) to "establish a basic framework within which EPA and NRC will endeavor to resolve issues of concern to both agencies that relate to the regulation of radionuclides in the environment." This MOU governs these proposed EPA regulations and the proposed NRC decommissioning standards. It formally defines the roles, responsibilities, and separate rulemaking activities of each agency concerning regulations that affect NRC licensees and NRC-licensed facilities and radioactive materials.

Under the MOU, if EPA determines that NRC's regulatory program achieves a sufficient level of protection of the public health and the environment, EPA will propose in the *Federal Register* that NRC licensees be exempted from the EPA radiation site cleanup regulations. EPA believes that this dual track approach provides the best means to help ensure that EPA cleanup regulations and NRC decommissioning standards are consistent.

Coordinated Implementation of Regulations

EPA is also coordinating with the Department of Energy (DOE), Department of Defense (DOD), and NRC on technical implementation issues for the cleanup of radioactive contamination at Federal facilities. EPA,

DOE, DOD, and NRC face several of the same steps during cleanup, such as initial site characterization, exposure and risk modeling, remedial design and action, onsite radiation monitoring, and compliance sampling and analysis. Each step presents many technical challenges, and all four agencies understand the clear advantages of meeting these challenges with a unified Federal approach that combines the best

scientific and technical resources and real-world experiences of each agency. It is EPA's intent to coordinate this Federal effort and to ensure all facets of the technical implementation guidance are based on scientifically sound and technologically feasible principles and methods.

List of Subjects in 40 CFR Part 195

Environmental protection, Cleanup standards, Decommissioning,

Decontamination, Intergovernmental relations, Radiation protection, Radioactive contamination, Recycle/reuse, Site remediation, Waste management standards.

Dated: October 15, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93-25928 Filed 10-20-93; 8:45 am]

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Federal Register

Thursday
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Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Special Federal Aviation Regulation No.
36, Development of Major Repair Data;
Proposed Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121, 127, 135, and 145****[Docket No. 17551; SFAR No. 36-6]****Special Federal Aviation Regulation No. 36, Development of Major Repair Data****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend and extend Special Federal Aviation Regulation (SFAR) No. 36, which provides that authorized repair station and aircraft operating certificate holders may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been directly approved by the Federal Aviation Administration (FAA). Proposed amendments include clarification of the scope of the SFAR authorization. Extension of the regulation would continue to provide, for those that qualify, an alternative from the requirement to obtain direct FAA approval of major repair data on a case-by-case basis, and would allow additional time for the FAA to incorporate the SFAR provisions into the regulations.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments on this proposal should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 17551, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 17551. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Continued Airworthiness Staff, Aircraft Engineering Division, AIR-107, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-7218.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, or economic impacts that might result from adoption

of the proposal contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposals; the proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the Rules Docket. Commenters wishing acknowledgment of mailed comments should enclose a stamped, self-addressed postcard on which the following statement is made: "Comments on Docket No. 17551." The postcard will be dated and time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3483. Each communication must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background*Statement of the Problem*

Special Federal Aviation Regulation No. 36 allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after accomplishing major repairs using data developed by the holder that have not been directly approved by the FAA. More than 40 air carrier and domestic repair station certificate holders currently have SFAR 36 authorizations. Because SFAR 36 will terminate on January 23, 1994, these authorizations will not be renewable unless the termination date of the SFAR is extended. Since the SFAR was initially adopted in 1978, some of the regulatory language has been subjected to differing field

interpretation. As a result, some repaired products have been returned to service by SFAR 36 authorization holders that did not have return to service authority. These interpretations are the result of changes in the repair industry since the initial adoption of the rule. The original SFAR 36 did not foresee that some repair stations would be authorized only to perform maintenance on parts or components of articles without authorization to return them to service. These interpretations of eligibility have allowed several SFAR 36 authorizations to be issued and used inconsistently with the original intent of the SFAR.

An aircraft "product" is an aircraft, airframe, aircraft engine, propeller, or appliance. An aircraft "article" is an airframe, powerplant, propeller, instrument, radio, or accessory. Although some repair stations are authorized only to perform maintenance on parts of articles or products, some SFAR 36 authorizations were used by these repair station certificate holders to approve the articles and products for return to service.

The FAA has found that while repair stations that specialize in the repair of parts or components of aircraft articles or products may have the technical capability and scope sufficient for the individual repair, they do not necessarily possess the overall knowledge necessary for returning an article or product to service. Only repair stations and air carriers that understand the form, fit, and function of an aircraft article or products should be authorized to approve that article or product for return to service after a major repair. Furthermore, one must understand the form, fit, and function of the article or product in order to appreciate the ramifications of a major repair being developed for that article or product. When the FAA finds that a repair station or air carrier has that necessary understanding, the FAA issues it a certificate and operations specifications commensurate with that finding, and the repair station or air carrier is granted return to service authority. This higher level of certitude by the FAA in the work and knowledge of the repair station or carrier that is authorized to approve the rated article or product for return to service is the basis for the SFAR 36 authorization to develop and use data for major repairs without direct FAA approval of the data. The preamble to the original SFAR 36 reflected this intent to limit the authorization to these repair stations and carriers when it discussed the need to have damaged aircraft repaired and returned to service as quickly as possible. The SFAR 36

system was never intended to support repairs accomplished further up in the repair stream.

Current Requirements

Current SFAR 36 states that, contrary provisions of §§ 121.379(b), 127.140(b), and 145.51 of the Federal Aviation Regulations notwithstanding, a certificate holder may approve an aircraft, airframe, aircraft engine, propeller, or appliance for return to service after accomplishing a major repair if the data used for the repair was developed by that certificate holder in accordance with an authorization issued under Special Federal Aviation Regulation No. 36. The current SFAR terminates on January 23, 1994.

History

Prior to the adoption of SFAR 36, certificate holders that were qualified to make repairs were required to obtain FAA approval on a case-by-case basis for data they had developed to perform major repairs. The only alternative to the time-consuming, case-by-case approval method was to petition for and obtain an exemption granting relief from the regulation. The number of exemptions being granted indicated that revisions to the Federal Aviation Regulations (FAR) were necessary, and SFAR 36 was adopted on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR eliminated the requirement for the authorized certificate holders to petition for exemption from the regulation, and allowed the FAA additional time to obtain the information necessary to develop a permanent rule change. Most of the affected certificate holders, however, did not use the provisions of SFAR 36 until it was well into its second year and nearing its expiration date of January 23, 1980. Since the FAA did not yet have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended to January 23, 1982.

Although the FAA has considered consolidating certain authorizations along with those issued under SFAR 36 to make them permanent parts of the regulations, no rulemaking action has been undertaken, and SFAR 36 has been extended three times. Currently, regulatory action is under consideration by the Aviation Rulemaking Advisory Committee (ARAC), and is discussed below.

Related Activity

The FAA has delegated to the ARAC the task of reviewing the current system of delegations to perform certain aircraft certification functions to determine

what, if anything, would improve the safety, quality, and effectiveness of the system. The ARAC may then forward to the FAA any recommendations for new or revised rules incorporating the provisions of SFAR 36, and any advisory, guidance, or collateral materials. Rulemaking actions based on the recommendations, if any, are not expected to be accomplished before the termination date of SFAR 36, January 23, 1994.

General Discussion of the Proposal

Section 1

The FAA proposes to define aircraft "product," "article," and "component" for the purpose of the SFAR. The definitions would help to explain more clearly an authorization holder's return to service authority.

Section 2

The FAA proposes to restate the general provisions of the current SFAR in terms applicable to the individual types of eligible certificate holders. Proposed paragraph (c) of section 2 clarifies that an SFAR 36 authorization does not expand the scope of authority of a repair station certificate holder; i.e., it does not give a repair station return to service authority for any article for which it is not rated or change the articles it is rated to repair.

Section 3

Proposed section 3 states that an authorized certificate holder may approve an aircraft product or article for return to service after accomplishing a major repair, using data not approved by the Administrator, only in accordance with the amended SFAR. Proposed section 3 requires that the data used to perform the major repair be developed and "approved" in accordance with the holder's authorization and procedures manual. Proposed section 3 also enables an authorization holder to use its developed repair data on a subsequent repair of the same type of product or article. For each subsequent repair, the holder would determine that accomplishment of the repair, using previously developed data, will return the product or article to its original or properly altered condition, to conform to all applicable airworthiness requirements. In addition, each subsequent use of the data would have to be recorded in the authorization holder's SFAR records.

Section 4

Proposed section 4 describes the procedures for applying for an SFAR 36 authorization.

Section 5

Proposed section 5 provides the requirements a certificate holder must meet to be eligible for an SFAR 36 authorization. Paragraphs (a)(2), (a)(3), and (b) define the personnel required and incorporate clarifying changes from the current SFAR. Paragraph (c) contains the reporting requirement of the current SFAR that pertains to changes that could affect the holder's continuing ability to meet the SFAR requirements.

Section 6

Proposed section 6 describes the procedures manual requirements. Paragraph (c) of proposed section 6 requires that an authorization holder that experiences a change in procedures or staff obtain and record FAA approval in order to continue to approve products or articles for return to service.

Section 7

Proposed section 7 states that the amended SFAR 36 terminates on January 23, 1999. All authorizations issued under the amended SFAR would terminate on that date unless earlier surrendered, suspended, revoked, or otherwise terminated.

Section 8

Proposed section 8 prohibits the transfer of an SFAR 36 authorization. This prohibition is retained from section 7 of the current SFAR.

Section 9

Proposed section 9 contains the inspection provisions of the current SFAR. It also emphasizes that the FAA must be able to determine whether an applicant has, or a holder maintains, personnel adequate to comply with the provisions of the SFAR and any additional limitations contained in the authorization.

Section 10

Proposed section 10 re-emphasizes that an SFAR 36 authorization does not expand the scope of products or articles that an aircraft operator or repair station is authorized to approve for return to service. This proposed section also emphasizes that the authorization allows a holder to approve for return to service a product or article after major repair performed by the holder using data developed by the holder without direct FAA approval of that data.

Section 11

Proposed section 11 contains the additional limitations provision of the current SFAR.

Sections 12 and 13

Proposed sections 12 and 13 retain, with clarifying changes, the data review and service experience requirements and the record keeping requirements of the current SFAR. Section 12 states the circumstances in which a holder would be required to submit the information necessary for corrective action on a repair. Paragraph (b) of section 13 lists the identification information required rather than use the term "FAA identification," which has been the source of confusion.

As noted above, the FAA is proposing a termination date of January 23, 1999, for SFAR No. 36. The 5-year extension was chosen to allow enough time for the ARAC to deliberate and forward a recommendation, and enough time for the FAA to deliberate and act upon it. If this proposed rule is adopted, each FAA office having jurisdiction over a current SFAR 36 authorization will reevaluate each holder in terms of the amended rule. All current holders would be notified in writing as to whether they continue to qualify under the amended rule.

Some current SFAR 36 holders' authorizations will lapse on the current termination date, January 23, 1994, unless they are authorized under the amended SFAR. The FAA would work with these holders that no longer qualify to establish, where possible, other means to perform major repairs. The means may include submitting repair data to an aircraft certification office (ACO) for approval, utilizing a consultant designated engineering representative (DER) to approve the data, or employing a company DER.

The extension of SFAR 36 would allow uninterrupted activity of the current authorization holders that qualify under the amended SFAR; those authorizations would be extended without the holders reapplying for authorization. The extension would also allow a new, qualified applicant to obtain an authorization, instead of petitioning for exemption from the regulations.

Paperwork Reduction Act

The reporting requirements of SFAR 36 have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on the amendments to 14 CFR parts 121, 127, 135, and 145—Special Federal Aviation Regulation No. 36,

Development of Major Repair Data. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, State, and local governments.

The FAA has determined that this rulemaking is not a significant regulatory action as defined by Executive Order 12866, and no Regulatory Impact Analysis was prepared. Nevertheless, in accordance with Department of Transportation Policies and Procedures, the FAA has evaluated the anticipated costs and benefits, which are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Cost Analysis

The FAA estimates that the one-time total cost of compliance would be \$54 for the industry and about \$840 for the FAA. This cost estimate was derived based upon two components: (1) Current SFAR 36 certificate holders (that would not qualify under the amended rule) applying for a DER, and (2) FAA costs to review SFAR 36 and DER authorizations.

Benefit Analysis

The proposed rule, with the changes noted in the preamble and the extended termination date, would allow certificate holders that qualify under the amended SFAR to continue to use their SFAR 36 authority and not incur the time and cost involved in applying for individual approvals of repair data or applying for exemptions from the regulations regarding major repairs.

The changes incorporated in the proposed rule will also eliminate ambiguities that exist because of the language in the present rule. These ambiguities have allowed component repair stations that do not have return to service authorization for articles to receive SFAR 36 authorizations "allowing" them to return articles to service. The FAA does not have as high a level of certitude in these facilities as it does in facilities that have been granted return to service authority for articles. The intent of SFAR 36, which allows authorized holders to approve self-developed data for major repairs, was to limit its scope to those repair stations in which the FAA had the highest level of certitude for the repairs they accomplish.

While there have been no documented instances of compromised safety as a result of articles repaired by those that hold the SFAR 36 authorization as a result of error, the

FAA has determined that the level of certitude in major repairs should not be compromised. Only those that understand the form, fit, and function of the articles and products they repair (i.e., those with return to service authorization for articles and products, but not components or parts) were meant to perform major repairs using self-developed and approved data. The benefit of this action would be to ensure that the major repairs accomplished under SFAR 36 authorizations are accomplished by the repair stations and air carriers with the necessary understanding of the form, fit, and function of the article or product being returned to service.

Comparison of Costs and Benefits

The costs associated with this proposed rulemaking (\$54 for industry and \$840 for the FAA) are negligible. In view of the negligible costs of the rule, coupled with benefits discussed above that affect all aircraft operators, the FAA has determined that the rule will be cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The costs associated with this proposed rule are below any threshold established by FAA Order 2100.14A. Therefore, the proposed rule would not have a significant economic impact on any small entity.

International Trade Impact Statement

The proposed rule would have neither an effect on the sale of foreign aviation products or services in the United States, nor an effect on the sale of U.S. products or services in foreign countries since it would not impose costs on aircraft operators or U.S. or foreign aircraft manufacturers.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, nor the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

I certify that the proposed rule: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a significant rule under DOT Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 CFR 11304, 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. In addition, this proposed rule has little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects**14 CFR Part 121**

Air carriers, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness, Aviation safety, Helicopters.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Helicopters, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121, 127, 135, and 145 as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

PART 127—[AMENDED]

2. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430, 49 U.S.C. 106(g).

PART 135—[AMENDED]

3. The authority citation part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421–1431, and 1502; 49 U.S.C. 106(g).

PART 145—REPAIR STATIONS

4. The authority citation for part 145 continues to read as follows:

Authority: Secs. 313, 314, 601, and 607, 72 Stat. 752; 49 U.S.C. app. 1354(a), 1355, 1421 and 1427; unless otherwise noted.

5. Special Federal Aviation Regulation No. 36, the text of which is found at the beginning of part 121, is revised to read as follows:

SFAR No. 36

1. Definitions. For purposes of this Special Federal Aviation Regulation—

(a) A product is an aircraft, airframe, aircraft engine, propeller, or appliance;

(b) An article is an airframe, powerplant, propeller, instrument, radio, or accessory; and

(c) A component is a part of an article or product.

2. General

(a) Contrary provisions of § 121.379(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate who operates large aircraft, who has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121, may perform a major repair on a product, as described in § 121.379(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(b) Contrary provisions of § 127.40(b) of the Federal Aviation Regulations notwithstanding, the holder of an air carrier operating certificate who has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 127 may perform a major repair on a product as described in § 127.140(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(c) Contrary provisions of § 145.51 of the Federal Aviation Regulations notwithstanding, the holder of a domestic repair station certificate under 14 CFR part 145 may perform a major repair on an article for which it is rated, using technical data not approved by the Administrator, and approve that article for return to service, if authorized in accordance with this Special Federal Aviation Regulation. If the certificate holder holds a rating limited to a component of an article or product, the holder may not, by virtue of this Special Federal Aviation Regulation, approve that article or product for return to service.

3. Major repair data and return to service.

(a) As referenced in section 2 of this Special Federal Aviation Regulation, a certificate holder may perform a major repair on a product or article using technical data that have not been approved by the Administrator, and approve that product or article for return to service, if the certificate holder—

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36, as amended on January 24, 1994;

(2) Has developed the technical data in accordance with the procedures manual;

(3) Has developed the technical data specifically for the product or article being repaired; and

(4) Has accomplished the repair in accordance with the procedures manual and the procedures approved by the Administrator for the certificate.

(b) For purposes of this section, an authorization holder may develop technical data to perform a major repair on a product or article and use that data to repair a subsequent product or article of the same type as long as the holder—

(1) Evaluates each subsequent repair and the technical data to determine that performing the subsequent repair with the same data will return the product or article to its original or properly altered condition, and that the repaired product or article conforms with applicable airworthiness requirements; and

(2) Records each evaluation in the records referenced in paragraph (a) of section 13 of this Special Federal Aviation Regulation.

4. Application. The applicant for an authorization under this Special Federal Aviation Regulation must submit an application, in writing and signed by an officer of the applicant, to the FAA Flight Standards District Office charged with the overall inspection of the applicant's operations under its certificate. The application must contain—

(a) If the applicant is

(1) The holder of an air carrier operating or commercial operating certificate, or the holder of an air taxi operating certificate who operates large aircraft, the—

(i) The applicant's certificate number; and
(ii) The specific product(s) the applicant is authorized to maintain under its certificate, operations specifications, and maintenance manual; or

(2) The holder of a domestic repair station certificate—

(i) The applicant's certificate number;
(ii) A copy of the applicant's operations specifications; and
(iii) The specific article(s) for which the applicant is rated;

(b) The name, signature, and title of each person for whom authorization to approve, on behalf of the authorization holder, the use of technical data for major repairs is requested; and

(c) The qualifications of the applicant's staff that show compliance with section 5 of this Special Federal Aviation Regulation.

5. Eligibility.

(a) To be eligible for an authorization under this Special Federal Aviation Regulation, the applicant must—

(1) Hold an air carrier, commercial, or air taxi operating certificate, and have been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121, 127, or 135.2, or hold a domestic repair station certificate under 14 CFR part 145;

(2) Have an adequate number of sufficiently trained personnel in the United

States to develop data and repair the products that the applicant is authorized to maintain under its operating certificate or the articles for which it is rated under its domestic repair station certificate; and

(3) Employ, or have available, a staff of engineering personnel that can determine compliance with the applicable airworthiness requirements of the Federal Aviation Regulations.

(b) At least one member of the staff required by paragraph (a)(3) of this section must—

(1) Have a thorough working knowledge of the applicable requirements of the Federal Aviation Regulations;

(2) Occupy a position on the applicant's staff that has the authority to establish a repair program that ensures that each repaired product or article meets the applicable requirements of the Federal Aviation Regulations;

(3) Have at least one year of satisfactory experience in processing engineering work, in direct contact with the FAA, for type certification or major repair projects; and

(4) Have at least eight years of aeronautical engineering experience (which may include the one year of experience in processing engineering work for type certification or major repair projects).

(c) The holder of an authorization issued under this Special Federal Aviation Regulation shall notify the Administrator within 48 hours of any change (including a change of personnel) that could affect the ability of the holder to meet the requirements of this Special Federal Aviation Regulation.

6. Procedures Manual.

(a) A certificate holder may not approve a product or article for return to service under section 2 of this Special Federal Aviation Regulation unless the holder—

(1) Has a procedures manual that has been approved by the Administrator as complying with paragraph (b) of this section; and

(2) Complies with the procedures contained in the procedures manual.

(b) The approved procedures manual must contain—

(1) The procedures for developing and determining the adequacy of technical data for major repairs;

(2) The identification (names, signatures, and responsibilities) of officials and of each staff member described in section 5 of this Special Federal Aviation Regulation who—

(i) Has the authority to make changes in procedures that require a revision to the procedures manual; and

(ii) Prepares or determines the adequacy of technical data, plans or conducts tests, and approves, on behalf of the authorization holder, test results; and

(3) A "log of revisions" page that identifies each revised item, page, and date of revision, and contains the signature of the person approving the change for the Administrator.

(c) The holder of an authorization issued under this Special Federal Aviation Regulation may not approve a product or article for return to service after a change in staff necessary to meet the requirements of section 5 of this regulation or a change in procedures from those approved under paragraph (a) of this section, unless that change has been approved by the FAA and entered in the procedures manual.

7. Duration of Authorization. Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 1999, unless it is earlier surrendered, suspended, revoked, or otherwise terminated.

8. Transferability. An authorization issued under this Special Federal Aviation Regulation is not transferable.

9. Inspections. Each holder of an authorization issued under this Special Federal Aviation Regulation and each applicant for an authorization must allow the Administrator to inspect its personnel, facilities, products, and records upon request.

10. Limits of Applicability. An authorization issued under this Special Federal Aviation Regulation applies only to—

(a) A product that the air carrier, commercial, or air taxi operating certificate holder is authorized to maintain pursuant to its continuous airworthiness maintenance program or maintenance manual; or

(b) An article for which the domestic repair station certificate holder is rated. If the certificate holder is rated for a component of an article, the holder may not, in accordance with this Special Federal Aviation Regulation, approve that article for return to service.

11. Additional Authorization Limitations. Each holder of an authorization issued under this Special Federal Aviation Regulation must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.

12. Data Review and Service Experience. If the Administrator finds that a product or article has been approved for return to service after a major repair has been performed under this Special Federal Aviation Regulation, that the product or article may not conform to the applicable airworthiness requirements or that an unsafe feature or characteristic of the product or article may exist, and that the nonconformance or unsafe feature or characteristic may be attributed to the repair performed, the holder of the authorization, upon notification by the Administrator, shall—

(a) Investigate the matter;

(b) Report to the Administrator the results of the investigation and any action proposed or taken; and

(c) If notified that an unsafe condition exists, provide the information necessary for the issuance of an airworthiness directive under part 39 of the Federal Aviation Regulations within the time period stated by the Administrator.

13. Current Records. Each holder of an authorization issued under this Special Federal Aviation Regulation shall maintain, at its facility, current records containing—

(a) For each product or article for which it has developed and used major repair data, a technical data file that includes all data and amendments thereto (including drawings, photographs, specifications, instructions, and reports) necessary to accomplish the major repair;

(b) A list of products or articles by make, model, manufacturer's serial number (including specific part numbers and serial numbers of components) and, if applicable, FAA Technical Standard Order (TSO) or Parts Manufacturer Approval (PMA) identification, that have been repaired under the authorization; and

(c) A file of information from all available sources on difficulties experienced with products and articles repaired under the authorization.

This Special Federal Aviation Regulation terminates January 23, 1999.

Issued in Washington, DC, on October 13, 1993.

Brenda H. Uttaro,

Acting Director, Aircraft Certification Service.

[FR Doc. 93-25789 Filed 10-20-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Register

Thursday
October 21, 1993

Part X

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Part 3280
Manufactured Home Construction and
Safety Standards; Notice of Availability of
Final Rule for Inspection

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing-Federal Housing
Commissioner**

24 CFR Part 3280

[Docket No. R-93-1497; FR-2622-N-04]

RIN 2502-AE66

**Manufactured Home Construction and
Safety Standards; Notice of Availability
of Final Rule for Inspection**

AGENCY: Office of the Assistant
Secretary for Housing-Federal Housing
Commissioner, HUD.

ACTION: Notice of availability of final
rule for inspection.

SUMMARY: This notice informs the public
of the availability of the final rule

amending energy conservation and
ventilation standards for manufactured
housing for inspection at the Office of
the Federal Register and at HUD.

FOR FURTHER INFORMATION CONTACT:
Philip W. Schulte, Chief, Compliance
Branch, Manufactured Housing and
Construction Standards Division,
Department of Housing and Urban
Development, 451 Seventh Street SW.,
room B-133, Washington, DC 20410.
Telephones: (voice) (202) 755-7420;
(TDD) (202) 708-4594. (These are not
toll-free numbers.)

SUPPLEMENTARY INFORMATION: A final
rule amending 24 CFR part 3280 to
promulgate energy conservation and
ventilation standards for manufactured
housing was issued by the Assistant
Secretary for Housing-Federal Housing
Commissioner on October 18, 1993. The
rule was submitted to the Federal

Register on October 19, 1993 and will
be filed for public display, and is
available for copying, on October 21,
1993 at the Office of the Federal
Register, 800 North Capitol Street, NW.,
Washington, DC between 8:45 a.m. and
5:15 p.m. The rule will be published on
October 25, 1993. A copy is also
available for inspection and copying in
the Office of the Rules Docket Clerk,
room 10276, Department of Housing and
Urban Development, 451 Seventh Street
SW., Washington, DC between 7:30 a.m.
and 5:30 p.m.

Dated: October 19, 1993.

Nicolas P. Retsinas,
*Assistant Secretary for Housing-Federal
Housing Commissioner.*

[FR Doc. 93-26121 Filed 10-20-93; 8:45 am]

BILLING CODE 4210-27-M

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Thursday, October 21, 1993

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 Designating October 16, 1993, and October 16, 1994, each as World Food Day. (Oct. 18, 1993; 107 Stat. 1034; 2 pages)

H.J. Res. 265/P.L. 103-109
 To designate October 19, 1993, as "National Mammography Day". (Oct. 18, 1993; 107 Stat. 1036; 1 page)
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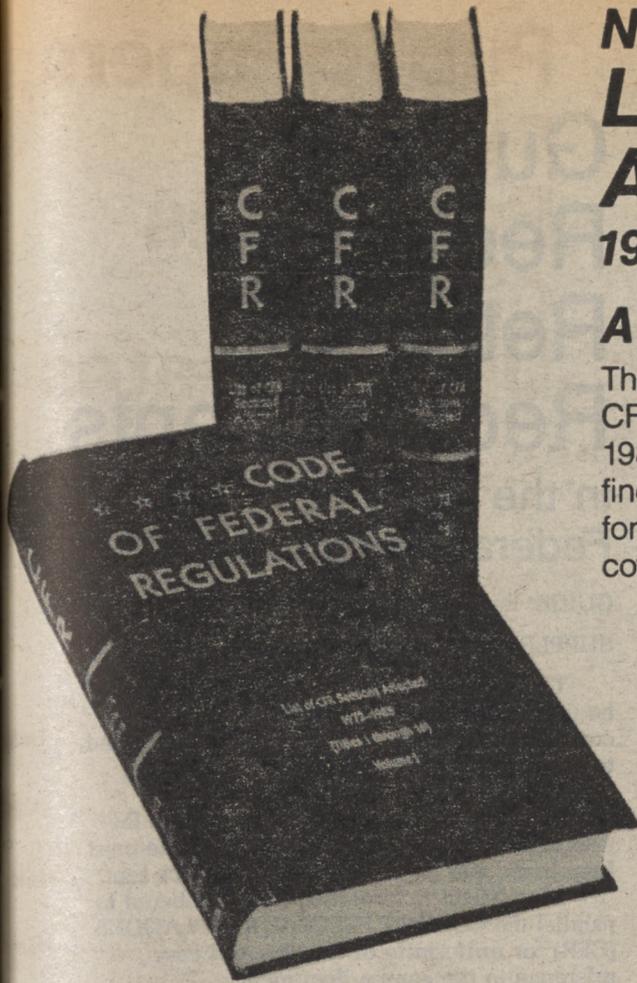
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