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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 275, and 283

[Amdt. No. 348]

Food Stamp Program: Hunger Prevention Act of 1988 and Mickey Leland Childhood Hunger Relief Act; Rules of Practice; Administrative Law Judges

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the rules of practice governing the administrative review process for State agencies challenging food stamp quality control (QC) claims and is intended to speed the resolution of the QC claims. This action is necessary to implement program administrative review requirements mandated by the Hunger Prevention Act of 1988 and the Omnibus Budget Reconciliation Act of 1993 (Mickey Leland Childhood Hunger Relief Act).

DATES: 1. *Effective Date:* This rule is effective August 5, 1994.

2. *Implementation Date:* This rule must be implemented for all QC billing actions beginning with fiscal year 1986.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 907, Alexandria, Virginia 22302, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), the Food Stamp Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). William E. Ludwig, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Only State and local welfare agencies will be affected to the extent that they are involved with appeals of Food Stamp Program quality control claims. The procedures to appeal quality control claims are being changed by this rule to streamline and reduce the time and resources State and local welfare agencies previously devoted to such appeals. Potential and current participants in the Food Stamp Program will not be affected.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping and reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and falls within the exceptions to coverage.

Background

On January 19, 1993, the Department issued a Notice of Proposed Rulemaking (NPRM) at 58 FR 5188 to implement section 603 of the Hunger Prevention Act of 1988 (HPA) (Pub. L. 100–435). The HPA amended the Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2032) regarding the Food Stamp Program's administrative review process for QC claims (7 U.S.C. 2023(a)). A total of eight comment letters were received on the proposed rule. One commenter subsequently advised the Department that it considered its comment letter to be inappropriate to the subject of the NPRM and withdrew its letter. The following analysis is based on the remaining seven comment letters.

Since issuance of the proposed regulations on January 19, 1993, Congress has enacted Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (Mickey Leland Childhood Hunger Relief Act) (Leland Act) to further streamline the appeals process for QC claims established under section 16(c) of the Act, 7 U.S.C. 2025(c). Section 13951 of the Leland Act amended sections 13(a)(1), 14(a) and 16(c) of the Act to: (1) Provide that State agencies will be assessed interest on outstanding QC liabilities if the administrative appeals process takes more than one year to resolve these claims; (2) to establish timeframes for the administrative review process and (3) to provide that an administrative law judge (ALJ) shall consider a State agency's contention of good cause when considering whether to waive all or part of a State agency's QC liability.

A full explanation of the rationale of the proposed rule is contained in its preamble. It is suggested that interested parties refer to that preamble for additional background information (58 FR 5188). Following is a detailed discussion on the comments received on

the proposed rule, non-discretionary revisions based on the Leland Act and the provisions of the final rule. The Department has determined that, with respect to the revisions based upon non-discretionary provisions of the Leland Act referenced above, notice and comment are unnecessary since the Department has no discretion with respect to these provisions. accordingly, such revisions have been made through this final rule.

Discussion of the Regulations

In the following discussion, we have identified each section of the regulation being addressed and have interspersed comments and responses as appropriate. The regulatory language from the NPRM was retained except where indicated.

Section 283.4: Filing Appeals for QC Claims of $50,000 or More

This section of the NPRM contains the procedures which State agencies are to follow in appealing the bill for collection from the Food and Nutrition Service (FNS) for QC claims of $50,000 or more.

Time: In § 283.4(a) of the NPRM, the Department proposed that a State agency must file a notice of appeal within 10 days of receipt by certified mail or personal service of the bill for collection from FNS.

Comments: The Department received three comments on this provision. One commenter stated that the 10-day time span to file the written notice of appeal was too short and that a 30-day period would be more reasonable. Two commenters indicated that it was unclear whether the notice of appeal or the bill for collection must be served by certified mail or personal service. These commenters questioned if it was FNS' intent to require that the notice of appeal be filed by certified mail or personal service.

Response: The Department has considered the comment urging extension of the 10-day requirement but cannot adopt this suggestion. Section 13951 of the Leland Act retained the 10-day filing requirement for the notice of appeal but provides that the filing deadline shall be extended by the ALJ for cause shown. The Department believes that the requirements for the content of the notice of appeal are minimal and should not pose any undue difficulty for the State agency to meet the 10-day filing deadline. If an extension is requested, the request and cause for such request must be submitted to the ALJ or chief judge prior to the expiration of the 10-day filing deadline. The Department has also revised § 283.22(f) to incorporate this provision.

The Department also notes that section 13951(c)(4) of the Leland Act authorizes the ALJ to extend the deadlines for filing of the appeal petition, answer, rebuttal and initial decision for cause shown.

The Department has considered the comment concerning the service of the notice of appeal and has revised this section to clarify that it is not FNS' intention to require the State agency to file the notice of appeal by certified mail or personal service. As discussed in the preamble to the NPRM, the State agency will have 10 days from receipt of the bill for collection to file a notice of appeal with the Hearing Clerk. Section 283.22(b) of the NPRM provides that the notice of appeal is considered to be filed on the date that it is postmarked or, if hand delivered, the date it is received by the Hearing Clerk. FNS will continue its policy of issuing the bill for collection either by certified mail or personal service. Once the State agency receives the bill for collection, it will have 10 calendar days to file its notice of appeal, unless an extension is requested prior to the expiration of the 10-day filing deadline.

Exhaustion of Administrative remedies: The Department has added new §§ 283.4(b) and 283.25(b) to clarify that the State agency must appeal the bill for collection to the ALJ in order to exhaust available administrative remedies as a prerequisite to seeking judicial review. While the Department believes it is clear that Congress intended section 14(a) of the Act to require the State agency to exhaust an administrative appeal before the ALJ before seeking judicial review, the rule has been clarified to specifically require such exhaustion. Thus, the decision of the ALJ is final for purposes of judicial review. However, as discussed in the preamble regarding § 283.17(c)(3), either party to the appeal may, at its option, seek reconsideration of ALJ decision or review by the Judicial Officer. Accordingly, §§ 283.4 (b)–(c) of the NPRM have been renumbered as §§ 283.4 (c)–(d) and §§ 283.25 (b)–(h) of the NPRM have been renumbered §§ 283.25 (c)–(i).

Content of the notice: In § 283.4(c) of the NPRM, the Department proposed the information which an acceptable notice of appeal must contain and that failure to file an acceptable notice of appeal would result in a dismissal of the notice by the ALJ and a waiver of the opportunity for further review unless the State agency pursues reconsideration by the ALJ or review by the Judicial Officer.

Comment: The Department received one comment on this provision. The commenter indicated that there were no provisions for a State to remedy a technical defect or omission in a notice of appeal.

Response: The Department has considered the comment concerning the technical defect or omission from the notice of appeal, and has determined that adoption of this suggestion is unnecessary since the NPRM contains provisions for a State to remedy a technical defect or omission in a notice of appeal. As discussed in § 283.4(c)(2) of the NPRM, if the ALJ dismisses the notice of appeal because the State agency fails to file an adequate notice, the State agency may remedy the defect and either request reconsideration by the ALJ or review by the Judicial Officer in accordance with §§ 283.17(d) and 283.20 of the NPRM. These provisions would not apply for failure to file a timely notice of appeal or request for extensions of time to file. This section has been renumbered in the final rulemaking as § 283.4(d).

Good Cause: In § 283.4(d) of the NPRM, the Department proposed that the Secretary's determination concerning good cause be final and not subject to an appeal to the ALJ.

Comment: The Department received one comment on this provision. The commenter objected to the fact that FNS' good cause determinations will not be subject to the appeal process.

Response: Section 13951(c)(4) of the Leland Act deleted the provision of section 603 of the HPA which provided that the Secretary retained the authority to waive some or all of a State's QC claim where the Secretary determined that the State agency had good cause for failure to meet its error rate goal and that the decision of the Secretary was not subject to review by the ALJ. The Leland Act requires that the ALJ, in considering a State agency's appeal of QC liability consider all grounds for denying the claim, in whole or in part, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause. The Department intends to publish a proposed rulemaking addressing the good cause criteria, as defined in the Leland Act. The regulation will be used by the Secretary and/or the Secretary's designee to assess, evaluate and respond to claims by the State for a good cause waiver of liability in conjunction with the appeals process. The Department has deleted § 283.4(d) of the NPRM. Additionally, § 283.5(a) of the NPRM has been amended to reflect Leland Act changes to good cause.

Receipt of notice of appeal and assignment of docket number: In § 283.4(e)(iii) of the NPRM, the Department proposed that the Hearing Clerk would acknowledge timely receipt of the notice of appeal and advise the State agency that the appeal petition must be filed within 30 days of service of the Hearing Clerk's letter.

Comment: The Department received one comment on this provision. The commenter indicated that the 30-day deadline for filing the appeal petition is too burdensome for States and that a 60-day deadline would be more appropriate. The commenter believed that the extended time period would enable States to obtain necessary legal support and to better develop appropriate arguments in support of the appeal petition.

Response: The Department has revised the deadline for filing the appeal petition from 30 days to 60 days. Section 13951(c)(4) of the Leland Act requires that the State agency submit evidence in support of the appeal not later than 60 days after receiving a notice of the claim and provides that the ALJ shall extend the 60-day deadline for cause shown. As previously discussed, § 283.22(f) of this final rule requires the State agency to file a written request for the extension prior to the due date for the submission with a showing of cause for the extension. This provision is in keeping with the legislative intent of the HPA that the appeals process be streamlined and the appeal procedures be as expeditious as possible.

Stay of Collection: In § 283.4(f) of the NPRM, the Department proposed that a timely notice of appeal would automatically stay collection action on the QC claim. However, interest would continue to accrue on the outstanding claim.

Comment: The Department received one comment on this provision. The commenter noted that since the NPRM would allow the Department to seek review by the Judicial Officer, the final determination of the ALJ may be delayed beyond the two year period during which interest on a QC claim would not accrue. The commenter suggested that in order to avoid the imposition of interest due to a delay that the State agency did not seek, the accrual of interest should be tolled (suspended) during the review by the Judicial Officer.

Response: The Department has considered this comment but cannot adopt this suggestion. Section 13951(a)(2) of the Leland Act provides that interest on the unpaid claim would accrue either from a date that is one year after the date the bill is received or the date of the decision on the administrative appeal, whichever is earlier. The Leland Act does not allow a suspension of interest beyond the one-year period, regardless of the reason for the delay in a final administrative decision.

Content of the Appeal Petition: In § 283.4(g)(3) of the NPRM, the Department proposed that the State agency must request an oral hearing and that failure to request that hearing would result in the forfeiture of the opportunity for an oral hearing. The QC claim would then be decided using the procedures established under subpart C.

Comment: The Department received one comment on this provision. The commenter suggested that rather than making an oral hearing an option for the State agency, the Department should make this a standard element in the process which the State must request be omitted if the State wishes an appeal to be decided without oral hearing. The commenter argued that this change would avoid any misunderstanding on the part of the State agency or the Department as to whether the State intended to request an oral hearing.

Response: The Department has considered this comment and has decided not to adopt the suggestion. Section 603 of the HPA provides that determinations regarding a QC claim shall be made on the record after an opportunity for an agency hearing. In addition, section 13951(c)(4) of the Leland Act requires that, on the request of the Secretary or the State agency, the ALJ shall hold an evidentiary hearing. The Department is retaining the provisions of the NPRM which require that the State agency notify the Hearing Clerk in its appeal petition if the State agency desires an oral hearing. The Department wishes to emphasize that a State agency that waives an oral hearing would not generally be permitted to later request that an oral hearing be conducted. The Department will amend § 283.4(g)(3) to cross-reference § 283.15(a) to clarify those circumstances under which it would be possible for a State agency to receive an oral hearing if it had not initially requested the oral hearing in its appeal petition. In addition, the Department has added § 283.4(i) to provide that if no hearing had been requested, the appeal would proceed in accordance with the procedures set forth under subpart C (Summary Procedure for Appeals of QC Claims of Less than $50,000). In the event that the appeal is pursued under subpart C, procedures exist under § 283.26(a) to provide the State agency with an opportunity to request an oral hearing if the State agency does not believe that the summary procedure is adequate for handling the appeal and that an oral hearing is necessary.

Section 283.6: Answer

This section of the NPRM contains the procedures that FNS is to follow in responding to the State agency's appeal petition.

Filling and service: In § 283.6(a) of the NPRM, the Department proposed that FNS would be allowed 30 days from the date of service of the State agency's appeal petition to file its answer to that petition.

Comment: The Department received one comment recommending that FNS be given 60 days in which to file an answer to the State agency's appeal petition. The commenter also agreed with the provision that failure to file a timely answer would be considered, for purposes of the appeal, an admission of the State agency's allegations.

Response: The Department has revised the deadline for FNS to file an answer to the State agency's appeal petition from 30 days to 60 days. Section 13951(c)(4) of the Leland Act requires that not later than 60 days after a State agency submits evidence in support of the appeal, the Secretary shall submit responsive evidence to the ALJ and provides that the ALJ shall extend the 60-day deadline for cause shown. As previously discussed, § 283.22(f) of the final rule requires the Secretary to file a written request for the extension prior to the due date for the submission with a showing of cause for the request.

Section 283.8: Amendment of Appeal or Answer

This section of the NPRM contains the provision allowing either party to amend the appeal or answer at any time prior to the other party filing a motion for a hearing.

Comment: The Department received one comment on this provision. The commenter noted that the preamble and the regulations do not contain a timeline in which the motion for a hearing is to be filed. The commenter suggested that it would be difficult to conclude that both parties would be knowledgeable if a motion for a hearing was filed with the appeal petition or the answer to the appeal petition.

Response: The Department is revising this provision to incorporate section 13951(c)(4) of the Leland Act which requires the State agency to submit rebuttal evidence to the ALJ, to the extent such evidence exists, not later than 30 days after the Secretary submits responsive evidence. The Department is retaining the provision in the NPRM

which allows either party to amend the appeal or answer at any time prior to the other party filing a motion for a hearing. An amendment following such a motion would require approval by the ALJ.

The Department wishes to clarify that the motion for a hearing would not be filed with the appeal or the answer to the appeal. Rather, as discussed in § 283.15(b), a motion for a hearing is filed by either party after the completion of all scheduled prehearing actions (such as discovery) that were agreed upon during the prehearing conference, scheduling conference or as otherwise established by the ALJ. The filing of a motion for a hearing advises the ALJ and the other parties to the appeal that the party has completed all prehearing activities and is ready to proceed with the hearing. Because the timing for the filing of the motion for a hearing is dependent upon the completion of all previously agreed upon prehearing activities, it is not possible to provide an absolute timeline as to when a motion for a hearing would be filed.

Section 283.10: Consent Decision

This section of the NPRM contains the provision allowing the parties to the appeal to mutually agree to end the appeal process prior to the ALJ issuing an initial decision. The consent decision would not be subject to review by the Judicial Officer or by the Federal Court.

Comment: The Department received one comment on this provision. The commenter suggested that this section be modified to state clearly that the parties may enter into a stipulation as to facts and that this would not preclude further review of the legal issues. The commenter was concerned that legal issues would not be considered if the underlying basis for the legal issues were facts which were not in dispute.

Response: The Department has considered this comment and has decided not to adopt it since the concerns of the commenter are addressed in § 283.11, the pre-hearing conference (and similarly in § 283.29—scheduling conference). As provided for in § 283.11(c), one purpose of the ALJ conducting a prehearing conference is to allow the parties to consider the possibility of obtaining stipulations as to facts in order to expedite and aid in the disposition of the appeal. The Department wishes to clarify that the purpose of the consent decree is to allow the parties to mutually agree to conclude the appeal process prior to the ALJ issuing an initial decision on the merits of the appeal. It is similar to settlement of a civil action in court. The consent decree is not subject to further review by the Judicial Officer or the Federal court. The appeals process contains prehearing procedures to allow the parties to enter into a stipulation as to facts which would not preclude further review of the legal issues. Furthermore, the Department believes that stipulations as to facts may be appropriate at any point to further expedite the appeal.

Section 283.11: Prehearing Conference and Procedure

This section of the NPRM contains the procedures for and the requirements of the prehearing conference.

Reporting: In § 283.11(d) of the NPRM, the Department proposed that the prehearing conference would not be stenographically reported unless ordered by the ALJ.

Comment: The Department received one comment on this proposal. The commenter noted that given the multiplicity of issues to be addressed at the prehearing conference, any party should be entitled to obtain a stenographic transcript of a prehearing conference at its own expense.

Response: The Department has considered this comment and has revised § 283.11(d) to clarify that any party may petition the ALJ to allow for a stenographic transcript of a prehearing conference at the petitioner's own expense. A copy of the prehearing transcript must be made available to the ALJ and the other parties to the appeal at no cost to the other parties. In response to this comment, the Department has also revised § 283.15(o) to clarify that the cost of preparing the hearing transcript and providing one copy of the transcript to the ALJ and the other parties to the appeal shall be borne by the party requesting the hearing. The Department further notes that where these costs are incurred by the State, such costs are eligible for reimbursement in accordance with part 277 of the Food Stamp Program regulations.

Section 283.12: Discovery

This section of the NPRM contains the procedures which the parties to the QC appeal are to follow in pursuing discovery. The ALJ would establish the scope of and schedule for the completion of discovery.

Comment: The Department received one comment concerning the organization of § 283.12. The commenter noted that this section was confusing and that organizational changes would clarify and simplify this provision.

Response: The Department has considered this comment and has adopted this suggestion. The Department has made the following changes from the NPRM: *§ 283.12(b)(5)* (Supplementation of response) has been renumbered as *§ 283.12(c)*; a new *§ 283.12(d)* (Frequency and use of discovery) has been created and *§§ 283.12(b)(3)(ii)* and *283.12(b)(3)(iv)* have been moved to this new subsection; a new *§ 283.12(e)* (Protective Orders) has been created and *§§ 283.12(b)(3)(iii)* and *283.12(b)(8)* have been moved to this new subsection; *§ 283.12(b)(7)* (Failure to respond to discovery) has been renumbered as *§ 283.12(f)*; a new *§ 283.12(g)* (Decision of the ALJ) has been created and *§§ 283.12(b)(3) (vii) and (viii)* have been moved to this subsection; a new *§ 283.12(h)* (Failure to comply with an order) has been created and *§§ 283.12(b)(7) (i) and (ii)* have been moved to this new subsection; *§ 283.12(b)(4)* (Postponements or delays) has been renumbered as *§ 283.12(i)*. In addition, *§ 283.12(b)(6)* (Inclusion in the record) has been moved to *§ 283.15(i)* and *§ 238.12(b)(9)* (Exchange of witness and rebuttal witness lists, statements and exhibits) has been moved to *§ 283.15(d)*.

Depositions: In § 283.12(a) of the NPRM, the Department proposed that the ALJ could order the taking of depositions in order to elicit testimony which otherwise might not be available at the time of the hearing.

Comments: The Department received five comments on this provision. All of the commenters objected to restricting the use of depositions to those instances in which testimony might not otherwise be available. One commenter argued that the States' right to due process at the administrative appeal level was in jeopardy. Another commenter noted that by categorically prohibiting the use of depositions other than to preserve testimony, FNS has seriously compromised the States' ability to challenge error-rate penalty claims. This commenter also argued that by preventing the ALJ from using discovery depositions as one tool of litigation management, FNS has compromised the ALJ's ability to preside over the taking of evidence.

Response: The Department has considered these comments but has not adopted them. It is the Department's position that the use of depositions should be restricted to those instances in which the witness may be unavailable to testify at the hearing. The Department believes that the discovery procedures provided in the NPRM for interrogatories, admissions, request for production of documents, and depositions, as well as the prehearing conference, provide adequate discovery

tools for the parties to prepare for the oral hearing or to submit cross motions for summary judgment pursuant to § 283.30.

In addition, the Department believes that permitting discovery depositions would result in substantial costs and delay in the appeals process. The Department recognizes that a significant goal of the amendments to the Act by section 603 of the HPA was to create a more efficient appeals process. The House Report states that an objective of section 603 of the HPA was to "streamline[] the appeals process of the quality control system. * * *" H.R. Rep. No. 828, 100th Cong., 2d Sess. 32 (1988). Further, Representative Panetta stated during debate of the HPA, "(a) third set of changes aims to speed the resolution of financial claims against State agencies for excessive error by streamlining the appeals process and providing for the payment of interest." 134 Cong. Rec. 20,982 (1988). Representative Emerson reiterated this same intention. 134 Cong. Rec. 20,984 (1988). The Department believes that restricting the use of depositions to those instances in which the witness may be unavailable to testify at the hearing is in keeping with the stated intent of Congress.

Interrogatories and Admissions: In §§ 283.12(b) (1) and (2) of the NPRM, the Department proposed that the parties be limited to fifteen interrogatories and admissions, including subparts, unless additional questions were authorized by the ALJ.

Comments: The Department received five comments on these provisions. All of the commenters objected to limiting the number of interrogatories and admissions. One commenter noted that given the ALJ's authority to limit discovery, it would be more efficient not to impose an arbitrary limit on the number of interrogatories and admissions. The commenter argued that the responding party could request a protective order from the ALJ if it felt that the requests were burdensome.

Response: The Department has considered these comments and has revised §§ 283.12(b) (1) and (2) to permit twenty-five interrogatories and admissions, including subparts, unless additional questions are authorized by the ALJ. The Department continues to believe that a limit on the number of interrogatories and admissions available without approval by the ALJ is reasonable given the authority of the ALJ to authorize an increase in that number. The Department disagrees that it should be the responsibility of the responding party to pursue a protective order if the scope of the discovery is burdensome. Rather, it is reasonable to place the responsibility on the requesting party to justify why the ALJ should authorize an increase in the number of interrogatories and admissions. This limit is also consistent with congressional intent to streamline the appeals process.

Production of Documents: In § 283.12(b)(3) of the NPRM, the Department proposed that any party to the appeal may serve a request for the production of documents that are in the possession or control of another party. The Department also proposed that the requested documents would be provided upon payment of fees for search and duplication of the documents.

Comment: The Department received two comments on this provision. One commenter noted that while the preamble to the NPRM contained a provision requiring that the requested documents be relevant to the issues under appeal, the regulatory language did not contain that requirement. The commenter suggested that the Department adopt the standard set forth in the Federal Rules of Civil Procedure. The second commenter opposed the assessment of fees for the production of documents. The commenter noted that since only governmental agencies are participating in the review of the QC claim, the Department ought to forgo the assessment of fees.

Response: The Department has considered the comment concerning the issue of the relevancy of the documents and has decided to revise § 283.12(b)(3) to be consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure.

The Department has considered the comment concerning the assessment of fees for the production of documents and has decided not to adopt it. The Department believes that it is consistent and equitable that the costs of the search and duplication of documents under a request for production be borne by the party making the request. State agencies may submit such costs for reimbursement under 7 CFR part 277.

Postponements or delays: In § 283.12(b)(4) of the NPRM, the Department proposed that the hearing or other proceedings of the appeal process would not be postponed or delayed pending a response to or resolution of issues pertaining to a Freedom of Information Act (FOIA) request.

Comment: The Department received one comment on this provision. The commenter strongly disagreed with the proposal that no delays or postponements of the QC appeal occur pending receipt of documents requested under FOIA. The commenter argued that documents requested under FOIA may be crucial to the resolution of the appeal and suggested that either a timeline should be imposed for furnishing documents requested under the FOIA or delays/postponements should be accepted as part of the process.

Response: The Department has considered this comment but has decided not to adopt it. The Department has established procedures for the production of documents which would negate the need for a party to the appeal to pursue document production under the provisions of FOIA. As provided for in § 283.12(b)(3) of the NPRM, the parties to the appeal are afforded the opportunity under the discovery process to request all documents relevant to the issues under appeal or which would reasonably lead to the discovery of such documents. In addition, the ALJ will establish the deadline by which all discovery activities must be completed. While the Department must process the FOIA and provide all responsive nonprivileged documents, it is inappropriate to delay or postpone the QC appeal pending action on the FOIA request. This also furthers congressional intent to streamline the appeals process. This section has been renumbered in the final rulemaking as § 283.12(i).

Witnesses and Exhibits: In § 283.12(b)(9)(ii) of the NPRM, the Department proposed that a witness whose name did not appear on the list of witnesses would not be permitted to testify at the hearing. In addition, exhibits which were not provided to the opposing party 15 days prior to the hearing would not be admitted into evidence at the hearing absent a showing of cause.

Comment: The Department received two comments on this provision. The commenters argued that there may be situations where a witness identified on an exchanged list is unavailable to testify at the hearing. However, the party may have a substitute witness not identified on the exchanged list who is available to testify. The party should be permitted to amend the list upon a showing of cause.

One commenter noted that there are circumstances where it is unnecessary to exchange documents during the prehearing process because those documents are already in the possession of each party through their normal course of business. The commenter argued that under this circumstance the regulation should require that the parties need only identify documents in the possession of the opposing party and notice an intention to introduce them at the hearing.

Response: The Department has considered the comment concerning witnesses and has revised the regulations to clarify that it is the intent of the Department that in those situations where a party shows cause as to the reason a witness's name did not appear on the witness list, upon motion and approval by the ALJ, that witness will be permitted to testify at the hearing. The Department also wishes to clarify that if this situation arises, the other parties to the appeal may request a delay in the hearing to allow for an opportunity to prepare for this previously unidentified witness.

The Department has considered the comment concerning the exchange of documents and has determined that adoption of this suggestion is unnecessary since § 283.11(a)(3) of the NPRM provides the parties with the option of either furnishing copies or a list of documents that the party anticipates relying upon at the hearing. Since exhibits are not necessarily previously existing documents which are in the possession of the other party, the Department is retaining the provision concerning the exchange of exhibits. This section of the NPRM has been moved in the final rulemaking to § 283.15(d).

Section 283.15: Procedure for Hearing

This section of the NPRM contains the procedures related to the scheduling and conducting of hearings before the ALJ.

Comment: The Department received one comment concerning the organization of this section. The commenter suggested that since §§ 283.12(b)(6) (Inclusion in the record) and (9) (Exchange of witness and rebuttal witness lists, statements and exhibits) relate to the hearing procedures, these two subsections should be moved to § 283.15.

Response: The Department has considered this comment and has adopted this suggestion. The Department has made the following changes from the NPRM: § 283.12(b)(9) has been moved and renumbered as § 283.15(d) and § 283.15(b)(6) has been moved and renumbered as § 283.15(i). The remaining sections of 283.15 have been renumbered, as necessary.

Time and Place: In § 283.15(b) of the NPRM, the Department proposed that the ALJ shall schedule a hearing upon receipt of a motion by any party setting forth the issue and stating that the matter is ready for a hearing.

Comment: The Department received one comment on this provision. The commenter indicated that this provision could be interpreted as allowing the ALJ to deny a party's request for a hearing. The commenter suggested that this section be revised to clarify that this section pertains only to the scheduling of a hearing. The commenter also noted that this section suggests that a hearing is permitted only if material facts are disputed and suggested that this section should be revised to permit the ALJ to hear oral arguments on legal issues even if there are no material facts in dispute.

Response: Section 13951(c)(4) of the Leland Act requires that the ALJ decide the appeal within 60 days after receipt of rebuttal evidence by the State agency, or, if no rebuttal evidence is submitted, within 90 days after the State submits the notice of appeal and evidence in support of the appeal. Given these statutory deadlines, the ALJ shall establish at the prehearing conference the dates by which the parties must complete prehearing activities. The parties would, following completion of such activities, file a motion stating that they are ready for hearing. The Leland Act authorizes the ALJ to extend certain statutory deadlines for cause shown. The Department anticipates that the ALJ may extend procedural deadlines for cause shown to accommodate the completion of prehearing and posthearing activities as is shown to be necessary. As previously discussed, § 283.22(f) of the final rule requires the parties to file a written request for an extension prior to the due date with a showing of cause for the extension requested.

The Department has considered the comment concerning the motion for a hearing and has determined that a revision to this provision is unnecessary, other than to eliminate the requirement to set forth the issues within the motion. The Department believes that the issues will be adequately framed by the prehearing procedures. Upon filing for a motion for hearing, an oral hearing will be scheduled within the statutory time frames provided by the Leland Act, unless an extension has been requested and granted by the ALJ or the ALJ has extended the time frames *sua sponte*.

The Department has considered the comment concerning the ALJ conducting an oral hearing on the legal issues when there are no material facts in dispute. The Department has not adopted this suggestion. The Department wishes to clarify that the purpose of the oral hearing is to present the facts which are in dispute. If it is determined or agreed at prehearing or otherwise that there are no material facts in dispute, then the appropriate course of action would be to pursue resolution of the remaining legal issues utilizing the procedures established under subpart C—Summary Procedure for Appeals of QC Claims of Less than $50,000. These legal issues should be the basis for cross motions for summary judgment. In view of the comment received, the Department has revised § 283.31(d) to allow the ALJ to request oral argument, if necessary, in those instances when a stipulation of all material facts has been entered by the parties to the appeal.

Time and Place: In § 283.15(b) of the NPRM, the Department proposed that the hearing before the ALJ shall be held at the Department of Agriculture, Washington, DC.

Comment: The Department received two comments on this provision. Both commenters objected to the hearings being held exclusively in Washington, DC and suggested that the ALJ should determine the location of the hearing taking into account the convenience of the parties and their witnesses.

Response: The Department has considered this comment and has revised § 283.15(b) to permit the ALJ to hold the hearing at a location more convenient to the parties and their witnesses upon a showing of unusual or extraordinary circumstances. The Department has determined that budgetary constraints will not be considered an unusual or extraordinary circumstance since these costs are eligible for reimbursement, in part, in accordance with part 277 of the Food Stamp Program regulations. The Department believes that requiring a showing of unusual or extraordinary circumstances takes into consideration such burdens of the parties while also preserving the efficiency of the appeals process.

Order of appearance: In § 283.15(f) of the NPRM, the Department proposed that FNS would have the burden of proving, by a preponderance of the evidence, the QC claim against the State and that the State agency would have the burden of proving, by a preponderance of the evidence, the facts upon which it bases its appeal.

Comment: The Department received one comment on this provision. The commenter argued that contrary to the intent of Congress, the proposed rule shifted the burden of proof to the States. The commenter suggested that this section be modified to require that FNS, and not the States, bear the burden of proving its error-rate penalty claim against the State. This burden of proof would be required for all factual matters put in issue.

Response: The Department has considered this comment and has

determined that a revision to this provision is unnecessary.

The Department, however, wishes to reiterate that it has the ultimate burden of persuasion, by a preponderance of the evidence, of the QC error rate claim against the State throughout the appeals process. Nothing in the NPRM or this final rule changes that burden. However, if the Department makes a prima facia case, the burden of going forward with the evidence upon which the State bases its appeal shifts to the State agency. The State must prove any evidence offered to meet this burden of going forward by a preponderance. It is well settled that a fact can never be proven by something less than a preponderance of the evidence. This section has been renumbered in the final rulemaking as § 283.15(g).

Objections: In § 283.15(h) of the NPRM, the Department proposed that at the hearing any party may object to a ruling by the ALJ and that any objection not made to the ALJ could not be raised if there were a subsequent review by the Judicial Officer.

Comment: The Department received one comment on this provision. The commenter noted that there appeared to be some confusion of intent between the preamble and the regulatory language. The commenter questioned if it was the intent of the Department to limit materials presented to the Judicial Officer.

Response: The Department has considered this comment and wishes to clarify that the review by the Judicial Officer shall be based on decisions rendered by the ALJ. The ALJ must have been provided the opportunity to render a decision on an issue before that issue can be appealed to the Judicial Officer. If a party to the appeal fails to raise an objection to the ALJ, that objection cannot be raised with the Judicial Officer since the ALJ had not rendered a decision on that objection. This section has been renumbered in the final rulemaking as § 283.15(j).

Official Records or documents: In § 283.15(j) of the NPRM, the Department proposed that official government records or documents could be admitted into evidence without the production of the person who prepared the document. The party could either submit the officially published document or a certified copy of the document. The Department's Office of General Counsel would prepare the certification for FNS and other Departmental records.

Comment: The Department received one comment on this provision. The commenter noted that this procedure was too cumbersome since it apparently would require that States go to the USDA General Counsel to certify each and every FNS document, including policy statements.

Response: The Department has considered this comment and wishes to clarify that State agencies would only be required to request that the USDA General Counsel certify FNS documents if such documents are not officially published documents. The Department also wishes to clarify that official records or documents may include official State government records or documents. In similar fashion, for unpublished State documents, any necessary certification would be provided by State personnel having the legal authority to make such certification. This section has been renumbered in the final rulemaking as § 283.15(l).

Section 283.17: Post-Hearing Procedures

This section of the NPRM contains the procedures which will be followed at the completion of the hearing before the ALJ. This section includes the requirements for post-hearing submissions by the parties to the appeal as well as the issuance of the ALJ decision.

ALJ's initial decision: In § 283.17(c)(1) of the NPRM, the Department proposed that the ALJ would issue a decision on the appeal within a reasonable period of time after the termination of the time allowed for filing of proposed findings of fact, conclusions of law, orders, and any briefs in support thereof.

Section 13951(c)(4) of the Leland Act requires that the ALJ decide the appeal within 60 days after receipt of rebuttal evidence by the State agency, or, if no rebuttal evidence is submitted, within 90 days after the State submits the notice of appeal and evidence in support of the appeal. The Department has revised §§ 283.17(c)(1) and 283.32(a) to incorporate this legislative provision. As previously discussed, § 283.22(f) of the final rule requires the State agency to file a written request for the extension prior to the due date for the submission with a showing of cause for the extension.

ALJ's Initial decision. In § 283.17(c)(3) of the NPRM, the Department proposed that no decision would be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

Comment: The Department received one comment on this provision. The commenter noted that if the decision of the ALJ is adverse to the State agency, judicial review by the Federal court should not be precluded because the State agency did not seek review by the Judicial Officer.

Response: The Department has considered this comment and has revised the final rule to provide that the initial decision of the ALJ is considered final for purposes of judicial review. However, this would not preclude FNS, or any other party to the appeal, from seeking either reconsideration by the ALJ or review by the Judicial Officer.

Motion for Reconsideration: In § 283.17(d)(3) of the NPRM, the Department proposed that a response to the motion for reconsideration would be allowed only upon the request of the ALJ.

Comment: The Department received two comments on this provision. The commenters argued that a response to a motion for reconsideration should be the standard procedure rather than at the discretion of the ALJ.

Response: The Department has considered this comment and has revised § 283.17(d)(3) to provide that the other parties to the appeal shall respond within 10 days of receipt of the brief or written materials filed by the party requesting reconsideration unless an extension has been requested and granted by the ALJ or the ALJ has extended the time frame *sua sponte.*

Motion for Reconsideration: In § 283.17(d)(4) of the NPRM, the Department proposed that the parties to the appeal could not pursue a motion for reconsideration if the initial ALJ decision had been revised based upon a previous motion for reconsideration.

Comment: The Department received one comment on this provision. The commenter noted that other agencies permit a party to file a motion for reconsideration at any time, as of right, on the basis of material error, new evidence, or substantially changed circumstances.

Response: The Department has considered this comment but has decided not to adopt it. The Department believes that with the modification to § 283.17(d)(3) allowing all parties to the appeal to respond to the initial motion for reconsideration, any further requests for review of the ALJ's decision should be made to the Judicial Officer.

Section 283.18: Motions and Requests

This section of the NPRM contains the procedures related to the filing of motions and requests with the ALJ or the Judicial Officer.

Response to motions and requests: In § 283.18(d) of the NPRM, the Department proposed that a party have 20 days to respond to a motion or request and that the party initiating the motion or request not be permitted to reply to the response of the other party unless ordered to do so by the ALJ.

Comment: The Department received one comment on this provision. The commenter argued that by not being permitted to file a reply brief, the party initiating the motion or request is disadvantaged since the initiating party would not have access to arguments raised in response to the motion or request. The commenter recommended that one response be allowed each party after the initial motion and response.

Response: The Department has considered this comment but has decided not to adopt it. This provision is in keeping with the congressional intent that the appeal process be streamlined and that the appeal procedures be as expeditious as possible. Since the ALJ can direct *sua sponte* that a reply be filed either to clarify issues or upon motion in those instances where a party believes that a reply is necessary, the Department believes that restricting the number of responses to a motion or request which may be filed would not be disadvantage to the party initiating the motion or request.

The Department has also revised the 20-day time frame to respond to a motion or request in order to address the statutory deadlines established by section 13951(c)(4) of the Leland Act for the completion of the appeals process. Given these deadlines, the Department has shortened the 20-day time frame to 10 days unless an extension has been requested and granted by the ALJ or the ALJ has extended such time frame *sua sponte*.

Section 283.20: Review by the Judicial Officer

This section of the NPRM contains the procedures for appealing the initial ALJ decision to the Department's Judicial Officer.

Filing of review petition: In § 283.20(a) of the NPRM, the Department proposed that within 30 days of receipt of the initial ALJ decision, any party to the appeal may seek Judicial Officer review.

Comments: The Department received four comments on this provision. The commenters objected to this provision arguing that the HPA prohibits Secretarial review of decisions made by the ALJ. The commenters recommended that the Department delete this provision.

Response: The Department has considered these comments but has decided not to adopt the recommendation to forgo Secretarial review of the initial ALJ decision. As discussed under § 283.17(c)(3), the Department has revised the regulations to provide that the initial decision of the ALJ shall be considered final for purposes of judicial review. However, this would not preclude any party to the appeal from seeing reconsideration by the ALJ or review by the Department's Judicial Officer within 30 days of the ALJ's decision.

It is the Department's position that the specific incorporation of section 557 of the Administrative Procedure Act (APA) (5 U.S.C. 557) by section 603 of the HPA, necessarily means that the Secretary is authorized to review ALJ decisions. Indeed, the APA expressly provides that an agency action can be final for purposes of the APA, and thus for purposes of judicial review, even though it is subject to reconsideration or appeal to a higher authority within the agency. 5 U.S.C. 704. This interpretation is consistent with both the expressed statutory language and legislative history of section 603 of the HPA. *See* Memorandum for Alan C. Raul, General Counsel, U.S. Department of Agriculture, from Douglas R. Cox, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice (February 20, 1991).

The Department has also determined that review by the Secretary of issues raised on appeal is a more efficient process for resolving disputes concerning initial ALJ decisions that if such issues were brought to the federal courts without providing the Secretary the opportunity to review and, if necessary, revise such decisions. The Secretary has delegated to the Judicial Officer the authority to act as the final deciding officer in adjudicatory proceedings subject to 5 U.S.C. 556 and 557. Section 283.20 will permit the Judicial Officer, on behalf of the Secretary, to address the party's objections to the initial ALJ decision, to apply expertise on the issues under review, exercise informed discretion, and create a more concise record for any subsequent judicial review. This procedure will also ensure that there is continuity in the decisions which are rendered for cases involving similar issues.

Submission of briefs: In § 283.20(h)(i) of the NPRM, the Department proposed that if the Judicial Officer determined that there were reasonable grounds that additional evidence which is material was not presented to the ALJ, the Judicial Officer shall remand the matter back to the ALJ for disposition.

Comment: The Department received one comment on this provision. The commenter questioned if it was the Department's intent to limit materials presented to the Judicial Officer.

Response: The Department has considered this comment and wishes to clarify that the Judicial Officer reviews the record created before the ALJ. However, if a party to the appeal can persuade the Judicial Officer that there are reasonable grounds why material evidence was not presented to the ALJ, the Judicial Officer shall remand the matter back to the ALJ for further consideration.

Section 283.30: Cross Motions for Summary Judgment

This section of the NPRM contains the procedures which are to be followed if the appeal is being pursued under subpart C—Summary Procedures for Appeal of QC Claims of Less than $50,000.

Comment: The Department received one comment on this provision. The commenter expressed a concern that the 35 page limitation on the brief accompanying the motion for summary judgment and the 15 page reply brief limitation were too restricted and recommended that a higher page limit be established.

Response: The Department considered this comment but decided not to adopt it. The Department believes that given the authority of the ALJ to increase the size of the brief and reply brief, the page limitations are reasonable. These page limits are consistent with congressional intent to streamline the appeals process. The Department has also made changes to subpart C to conform to the timeframes specified in the Leland Act.

Implementation

In accordance with section 701(b)(5)(c) of the HPA, the amendments to section 14 of the Act are effective and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

List of Subjects

7 CFR Part 272

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 283

Administrative practice and procedures, claims, Food stamps, Government procedures, and penalties.

For the reasons set out in the preamble, 7 CFR parts 272 and 275 are amended and 7 CFR part 283 is added as follows:

1. The authority citation for parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(135) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(135) *Amendment No. 348.* The provisions of *Amendment No. 348* are effective August 5, 1994 and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

PART 275—PERFORMANCE REPORTING SYSTEM

3. Section 275.23 is amended by revising paragraph (e)(5)(iii) to read as follows:

§ 272.23 Determination of State Agency Program Performance.

* * * * *

(e) * * *

(5) * * *

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter.

* * * * *

4. 7 CFR part 283 is added to read as follows:

PART 283—APPEALS OF QUALITY CONTROL ("QC") CLAIMS

Subpart A—General

Sec.

283.1 Meaning of words.
283.2 Scope and applicability.
283.3 Definitions.

Subpart B—Appeals of QC Claims of $50,000 or More

283.4 Filing appeals for QC claims of $50,000 or more.
283.5 Motion to dismiss.
283.6 Answer.
283.7 Procedures upon failure to file an answer.
283.8 Rebuttal or amendment of appeal or answer.
283.9 Withdrawal of appeal.
283.10 Consent decision.
283.11 Prehearing conference and procedure.
283.12 Discovery.
283.13 Subpoenas.
283.14 Fees of witnesses.
283.15 Procedure for hearing.
283.16 Consolidation of issues.
283.17 Post-hearing procedure.
283.18 Motions and requests.
283.19 ALJs.
283.20 Review by the Judicial Officer.
283.21 Ex parte communications.
283.22 Form; filing; service; proof of service; computation of time; and extensions of time.
283.23 Procedural matters.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

283.24 Incorporation of procedures by reference.
283.25 Filing Appeals for QC claims of less than $50,000.
283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.
283.27 Procedures upon failure to file an answer.
283.28 Discovery.
283.29 Scheduling conference.
283.30 Cross motions for summary judgment.
283.31 Review of the record.
283.32 ALJ's initial decision.

Authority: 7 U.S.C. 2011–2032.

Subpart A—General

§ 283.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 283.2 Scope and applicability.

The rules of practice in this part, shall be applicable to appeals by State agencies of Food and Nutrition Service quality control (QC) claims for Fiscal Year ("FY") 1986 and subsequent fiscal years pursuant to sections 14(a) and 16(c) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2023(a) and 2025(c).

§ 283.3 Definitions.

As used in this part, the terms as defined in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032 ("Act"), and in the regulations, standards, instructions or orders issued thereunder, shall apply with equal force and effect. In addition, and except as may be provided otherwise in this section:

Administrator means the Administrator, Food and Nutrition Service, U.S. Department of Agriculture ("USDA").

ALJ means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

Appeal means the appeal to the ALJ.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include procedural matters.

Filing. A pleading or other document allowed or required to be filed in accordance with this part shall be considered filed when postmarked, if mailed, or when received, if hand delivered.

FNS means the Food and Nutrition Service, USDA.

Hearing means that part of the appeal which involves the submission of evidence before the ALJ for the record in the appeal.

Hearing Clerk means the Hearing Clerk, USDA, Washington, DC 20250.

Judicial Officer means an official of the USDA delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law 97–35, title I, sec. 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

OC claim means a claim made pursuant to 7 U.S.C. 2025(c).

Secretary means the Secretary of the USDA.

State agency means:

(1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency; and

(2) The Indian tribal organization of any Indian tribe determined by the Secretary to be capable of effectively administering a Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032.

Subpart B—Appeals of QC Claims of $50,000 or More

§ 283.4 Filing appeals for QC claims of $50,000 or more.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of $50,000 or more for a food stamp QC error rate in excess of the tolerance level. A State agency shall file a written notice of appeal, in accordance with this subpart, within 10 days of receipt of the bill for collection from FNS for a QC claim of $50,000 or more. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal

the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk in accordance with § 283.22(b).

(c) *Content of the notice.* (1) A notice of appeal, in order to be considered acceptable, must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of $50,000 or more identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice, dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advice that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) Advice that the State agency must file and serve its appeal petition, as set forth in § 283.22, not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of the appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists;

(2) The nature of the relief sought, and;

(3) A request for an oral hearing, if desired by the State agency. Failure to request an oral hearing will result in a forfeiture of the opportunity for such a hearing, except as provided in § 283.15(a).

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall:

(1) File an answer, in accordance with § 283.6, not later than 60 days after the State agency submits its appeal petition and;

(2) Advise the Hearing Clerk if FNS wishes to have an oral hearing.

(i) *Oral hearing not requested.* If no oral hearing has been requested, the appeal shall proceed in accordance with the procedures set forth under subpart C of this part.

§ 283.5 Motion to dismiss.

(a) *Filing of motion to dismiss.* Prior to or at the same time as filing the answer, FNS may file a motion to dismiss. The appeal may be challenged on the basis that the notice of appeal was not filed within 10 days or as that time may have been extended by the ALJ, the appeal petition was not filed in accordance with § 283.4, or that the appeal petition is substantially incomplete and could not be quickly and easily cured by amendment. The motion must be accompanied by clear and convincing proof of any of these factors alleged as grounds for dismissal.

(b) *Service of motion to dismiss.* FNS shall serve the State agency with a copy of the motion to dismiss. The State agency will have 10 days from date of service to submit objections to the motion.

(c) *Ruling on a motion to dismiss.* The ALJ will rule on the motion to dismiss before any further action proceeds on the basis of the merits of the appeal. The basis of the ruling will be clearly documented and will become part of the official record. If the ALJ denies the motion, FNS shall file its answer in accordance with § 283.6 within 60 days of service of the ALJ's ruling, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(d) *Dismissal of appeal.* If the ALJ finds the basis for the motion to have merit, the appeal may be dismissed. The initial decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Waiver.* Failure to file for dismissal of the appeal by the time the answer is required to be filed will result in waiver of the right to request dismissal.

§ 283.6 Answer.

(a) *Filing and service.* Not later than 60 days after the State agency submits its appeal petition, or within 60 days following service of a ruling in accordance with § 283.5, FNS shall file an answer signed by the FNS Administrator or authorized representative or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(b) *Contents.* The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(1) Clearly set forth any defense asserted by FNS; or

(2) State that FNS admits all the facts alleged in the appeal petition; or

(3) State that FNS admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation, unless FNS and the State agency have agreed to a consent decision pursuant to § 283.10.

§ 283.7 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of hearing. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such motion and proposed decision, FNS may file objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If

meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of the State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.8 Rebuttal or amendment of appeal or answer.

(a) Not later than 30 days after FNS submits an answer in accordance with § 283.6, the State agency may submit rebuttal evidence.

(b) At any time prior to the filing of a motion for a hearing pursuant to § 283.15(b), the appeal petition or the answer may be amended without prior authorization by the ALJ. Thereafter, such an amendment may only be made as authorized by the ALJ upon a showing of cause.

§ 283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all opportunity to appeal or seek further administrative or judicial review on the claim or related matters.

§ 283.10 Consent decision.

At any time before the ALJ files an initial decision, FNS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall be final and shall take effect 30 days after the date of the delivery or service of such decision and is not subject to further administrative or judicial.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. Prehearing conferences may be conducted telephonically. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The nature of and the date by which discovery, as provided in § 283.12, must be completed;

(8) The identification of documents or matters of which official notice may be requested;

(9) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(10) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* (1) A prehearing conference will not be stenographically reported unless so directed by the ALJ.

(2) Any party to the appeal may, upon motion, request the ALJ to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

(e) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the ALJ elects to make a statement on the record at the hearing summarizing the actions taken.

§ 283.12 Discovery.

(a) *Dispositions.*—(1) *Motion for taking deposition.* Only upon a finding by the ALJ that a deposition is necessary to preserve testimony as provided in this subparagraph, upon the motion of a party to the appeal, the ALJ may, at any time after the filing of the answer, order the taking of testimony by deposition. The motion shall set forth:

(i) The name and address of the proposed deponent;

(ii) The name and address of the person (referred to hereafter in this section as the "officer") qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(iii) The proposed time and place of the examination, which shall be at least 15 days after the date of service of the motion; and

(iv) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for use as provided in accordance with paragraph (a)(7) of this section.

(2) *ALJ's order for taking depositions.* If the ALJ finds that the testimony may not otherwise be available at the hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) The time and place of the examination;

(ii) The name of the officer before whom the examination is to be made; and

(iii) The name of the deponent. The officer and the time and place need not be the same as those suggested in the motion.

(3) *Qualifications of officer.* The deposition shall be made before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(4) *Procedure on examination.* (i) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. Objections to

questions or documents shall be in the short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(ii) The party taking the deposition shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the ALJ. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the appeal and filed with the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(iii) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be taken by telephone. A deposition taken by telephone is to be taken at the place where the deponent is to answer questions propounded to the deponent.

(iv) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the manner of recording, preserving and filing of the deposition, and may include other provisions to assure that the recorded testimony is accurate and trustworthy.

(5) *Certification by the officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the appeal, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(6) *Corrections to the transcript.* (i) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript of the deposition.

(ii) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(iii) At any time prior to the use of the deposition in accordance with paragraph (a)(7) of this section and after consideration of any objections filed thereto, the ALJ may issue an order making any corrections in the transcript which the ALJ finds are warranted, and these corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(7) *Use of depositions.* A deposition ordered and taken in accordance with the provisions of this section may be used in an appeal under these rules if the ALJ finds that the evidence is otherwise admissible and

(i) That the witness is deceased;

(ii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

(iii) That the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or

(iv) That such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, any other party may require the introduction of any other part which is relevant be considered with the part introduced, and any party may introduce any other parts.

(b) *Interrogatories, requests for admissions and requests for production of documents*—(1) *Interrogatories.* A party may submit written interrogatories to any other party to an appeal. The time for submitting and responding to written interrogatories shall be set by the ALJ at the pre-hearing conference, but in no event shall the time for response be less than 20 days from the date of service or within such time as determined upon motion to the ALJ. The number of interrogatories submitted by each party shall not exceed twenty-five questions including subparts, unless additional interrogatories are authorized by the ALJ. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under penalty of perjury by the person making them. Objections shall be signed by the attorney of record in the appeal or by the responding party's authorized representative.

(2) *Request for admissions.* A party may submit a written request for admission of the truth of any matters relevant to the appeal to any other party to the appeal. The time for submitting a written request for admission shall be set by the ALJ at the pre-hearing conference. The number of admissions contained in a request submitted by a party shall not exceed twenty-five unless additional admissions are authorized by the ALJ. The matter is admitted unless, within 20 days after service thereof, or within such time as determined upon motion to the ALJ, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter signed by the party, counsel or designated representative. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for the failure to admit or deny unless it is stated that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) *Request for production of documents.* (i) Any party may serve upon any other party to the appeal a request for production of documents which are in the possession or control of the party upon whom the request is served. The time for service and response to such a request shall be set by the ALJ at the pre-hearing conference. Upon payment of fees for search and duplication of documents, any party to the appeal may obtain copies of such documents.

(ii) Parties may request production of any documents regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Grounds for objection will not exist if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(iii) If such documents include privileged information or information the disclosure of which is proscribed by the Food Stamp Act of 1977, as amended, such documents need not be produced.

(c) *Supplementation of response.* A party who knows or later learns that a response is incorrect is under a duty to correct such response as soon as possible. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired. A party is under a duty to supplement responses with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which such expert(s) is expected to testify, and the substance of the testimony.

(d) *Frequency and use of discovery.* The ALJ shall limit, upon motion of a party, the frequency or extent of discovery if the ALJ determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(e) *Protective orders*—(1) *Request for protective order.* A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating why discovery should be limited or should not be required.

(2) *Issuance of protective order.* In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That discovery not be had;

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(f) *Failure to respond to discovery*—(1) *Motions to compel.* If a deponent fails to respond or gives an evasive or incomplete answer to a question propounded at a deposition pursuant to paragraph (a) of this section or a party fails to respond or gives evasive or incomplete answers to written interrogatories or admissions, or fails to respond, in full or in part, to a request for production of documents served pursuant to paragraph (b) of this section, the party seeking discovery may apply for an order compelling an answer by filing and serving a motion on all parties and deponents.

(2) *Filing motion to compel.* (i) Such motion must be filed within 20 days following the service of the unresponsive answer upon deposition or within 20 days after expiration of the period allowed for answers to interrogatories or production of documents.

(ii) On matters related to an oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) *Responding to motion to compel.* A response to the motion may be filed in accordance with § 283.18(d).

(g) *Decision of the ALJ.* (1) The ALJ may grant a motion to compel production or deny a motion for a protective order only if the ALJ finds that the discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues; it is not unduly costly or burdensome; it will not unduly delay the proceeding; and the information sought is not privileged.

(2) The initial decision of the ALJ regarding the motion to compel the production of privileged documents or the motion for a protective order shall become final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(h) *Failure to comply with an order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by order of the ALJ, such refusal may subject the refusing party to proceedings to compel compliance with the ALJ's order in the appropriate United States district court.

(2) If any party or other person refuses to obey an order made under this section requiring an answer to designated questions or production of documents, the ALJ may order that the matters regarding which questions were asked or the contents of the document or documents or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(i) *Postponements or delays.* No hearing, proceeding or other matter under this part shall be postponed or otherwise delayed pending the response or resolution of issues pertaining to a request for information pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 283.13 Subpoenas.

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the appeal may be required by subpoena at the designated place of hearing. Except for cause shown, requests for subpoenas shall be filed at least 15 days prior to the date of the hearing. Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

(b) *Service of subpoenas.* (1) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with a copy of the subpoena, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(2) Subpoenas may be served:

(i) By a U.S. Marshal or deputy marshal,

(ii) By any other person who is not less than 18 years of age, or

(iii) By registering and mailing a copy of the subpoena addressed to the person to be served at the last known principal place of business or residence.

(3) Proof of service may be made:

(i) By the return of service on the subpoena by the U.S. Marshal or deputy marshal,

(ii) If served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein,

(iii) If served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein, or

(iv) If service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt. Where the subpoena is issued on behalf of the Secretary and service is by mail, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service.

(4) In making personal service, the person making service shall leave a copy of the subpoena with the person

subpoenaed, or, if such person is not immediately available, with any other responsible person authorized to accept service residing or employed at the place of residence or business of the person subpoenaed.

(5) The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same. The party at whose request the subpoena is issued shall be responsible for the service thereof.

§ 283.14 Fees of witnesses.

Witnesses summoned under these rules shall be paid the same fees and expenses that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose request the witness appears. Current Federal, State, or local government employees shall not be eligible to receive witness fees.

§ 283.15 Procedure for hearing.

(a) *Request for hearing.* A party may request a hearing on the facts by including such request in its Appeal Petition or Answer, whichever is appropriate. Failure to request a hearing within the time specified shall constitute a waiver of the opportunity for such a hearing, except as provided for under § 283.4(i). In the event FNS denies any material facts and fails to request a hearing, the matter may be set down for hearing on motion of the State agency or upon the ALJ's own motion.

(b) *Time and place.* If any material issue of fact is joined by the pleadings, the ALJ, upon motion of any party, stating that the matter is ready for hearing, shall set a time for the hearing, as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The hearing shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the hearing be held at another location. The ALJ shall file a notice stating the time and place of the hearing. If any change in the time of the hearing is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript or actual notice given to the parties.

(c) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(d) *Exchange of witness and rebuttal witness lists, statements and exhibits.* (1) Witness and rebuttal witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 283.12(a)(7), shall be exchanged at least 15 days in advance of the hearing or at such other time as may be set by the ALJ.

(2) A witness whose name does not appear on the witness list shall not be permitted to testify and exhibits which were not provided to the opposing party as provided above shall not be admitted into evidence at the hearing absent a showing of cause and as authorized by the ALJ.

(e) *Deparment of attorney or representative.* (1) Whenever an ALJ finds that a person acting as attorney or designated representative for any party to the appeal is guilty of unethical or contumacious conduct in, or in connection with an appeal, the ALJ may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken on any such order, but no appeal of the QC claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer. Provided, however, that the ALJ shall suspend the appeal of the QC claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(f) *Failure to appear.* (1) If FNS or the State agency, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing and to have admitted any facts which may be presented at the hearing. Such failure by either party shall also constitute an admission of all the material allegations of fact contained in any pleadings submitted by the other party. The party who appears shall have the option of whether to follow the procedure under § 283.7 or to present evidence, in whole or in part, in the form of declarations or by oral testimony before the ALJ.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the ALJ's initial decision, to file a motion for reconsideration pursuant to § 283.17(d) or to seek review by the Judicial Officer in accordance with § 283.20.

(g) *Order of proceeding.* Except as may be decided otherwise by the ALJ, FNS shall proceed first at the hearing. FNS has the burden of proving, by a preponderance of the evidence, the QC claim against the State agency for a QC error rate in excess of the tolerance level. The State agency will proceed second and must prove, by a preponderance of the evidence, the facts upon which it bases its appeal.

(h) *Evidence.* (1) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(2) Upon a finding of cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the appeal or whose presence is shown by a party to be essential to the presentation of the party's cause.

(3) After a witness called by either party has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the opposing party which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(4) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded by order of the ALJ insofar as practicable.

(i) *Inclusion in the record.* At the oral hearing or as ordered by the ALJ, depositions to the extent deemed admissible, written interrogatories, written requests for admission and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, written interrogatory, written request for admission or response thereto is offered in evidence by a party, any other party may require that all of it, which is relevant to the part introduced, be offered, and any party may introduce any other parts.

Such depositions, written interrogatories, written requests for admission and respective responses thereto shall be admissible in evidence subject to such objections as to relevancy, materiality or competency of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

(j) *Objections.* (1) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross examination or to any other ruling by the ALJ, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the ALJ.

(2) Only objections made before the ALJ may be subsequently relied upon on review by the Judicial Officer.

(k) *Exhibits.* Four copies of each exhibit shall be filed with the ALJ. However, where there are more than two parties in the appeal, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(l) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(m) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(n) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of a document or other exhibit, it shall be marked for identification and inserted in the hearing record. In either event, if the Judicial Officer, upon review, determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, the evidence shall be considered a part of the transcript and hearing record. If the Judicial Officer determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, and that it would inappropriate to have such evidence considered a part of the hearing record without reopening the hearing, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(o) *Transcript.* Hearings shall be recorded and transcribed verbatim. The party requesting the hearing shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

§ 283.16 Consolidation of issues.

Similar issues involved in appeals by two or more State agencies may be consolidated upon motion by the State agencies, FNS, or at the discretion of the ALJ if it is decided that consolidation would help to promote administrative efficiency.

(a) *Disposition of consolidated issues.* If the ALJ orders consolidation, the issues consolidated will be considered first. If a hearing has been requested by any of the parties that have had issues consolidated, arguments on the consolidated issues will be heard before arguments on dissimilar issues. The ALJ will take the information into consideration along with arguments on other issues in preparing initial decisions for QC appeals in which some issues have been consolidated.

(b) *Initial decision.* (1) If the ALJ decides the evidence and arguments by the State agencies on the consolidated issues cannot be overcome by the evidence presented by FNS and are sufficient to grant the relief requested by a State agency or all State agencies in which the issue is involved, the ALJ shall prepare an initial decision as provided in § 283.17(c).

(2) FNS may file a motion for reconsideration pursuant to § 283.17(d) or seek review by the Judicial Officer in accordance with § 283.20.

§ 283.17 Post-hearing procedure.

(a) *Corrections to transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions of law, order and briefs, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the matter prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record. The transcript shall be deemed to be certified without further action by the ALJ.

(3) At any time prior to the filing of the ALJ's initial decision and after consideration of any objections filed as to the transcript, the ALJ may issue an order making any corrections in the transcript that the ALJ finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions of law, order, and briefs.* The parties may file proposed findings of fact, conclusions of law and orders based solely upon the record and on officially noticed matters, and briefs in support thereof. briefs may be filed at the discretion of the ALJ. The ALJ shall announce at the hearing the time within which these documents may be filed.

(c) *ALJ's initial decision.* (1) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. In accordance with § 283.22(f), the ALJ may, upon motion or *sua sponte*, extend this deadline for cause shown.

(2) The ALJ shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(3) Such initial decision shall be considered final for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(4) If no motion for reconsideration or review by the Judicial Officer is filed, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 day after service.

(d) *Motion for reconsideration.* (1) Except as provided in paragraph (d)(4) of this section, any party may file a motion for reconsideration of the initial decision within 30 days of service of the initial decision. If served by mail, the time for filing a motion for reconsideration will be 5 days longer in accordance with § 283.22.

(2) Every such motion must set forth the mattes claimed to have been erroneously decided and the basis of the alleged errors. Such motion shall be accompanied by a supporting brief.

(3) Responses to such motions shall be filed in accordance with § 283.18(d).

(4) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(5) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(6) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

(7) If the ALJ issues a revised initial decision, that decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

§ 283.18 Motions and requests.

(a) *Filing.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties by the moving or requesting party, except motions and requests made on the record during the oral hearing. The ALJ assigned to the appeal or the Chief Judge shall rule upon all motions and requests filed or made prior to seeking review of the ALJ's initial decision pursuant to § 283.20, except motions directly relating to such review. Thereafter, the Judicial Officer shall rule on any motions and requests as well as the motions directly relating to the review of the ALJ's initial decision.

(b) *Time for filing.* Any motion or request may be filed at any time, except that:

(1) Motions to dismiss pursuant to § 283.5 must be filed within the time allowed for filing an answer; and

(2) Motions for reconsideration must be filed within 30 days of service of the ALJ's initial decision pursuant to § 283.17(d).

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions and requests.* Within 10 days after service of any written motion or request or within such shorter or longer period as may be fixed by the ALJ or Judicial Officer, an opposing party may file a response to the motion or request. The moving party shall have no right to reply to the response; however, the ALJ or Judicial Officer may order that a reply be filed.

(e) *Certification to the Judicial Officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the seeking of review pursuant to § 283.20 shall be made by and in the discretion of the ALJ. The ALJ may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 283.19 ALJs.

(a) *Assignment.* No ALJ shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ.* (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers.* (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

(i) Rule upon motions and requests;

(ii) Set the time and place of a pre-hearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(iii) Administer oaths and affirmations;

(iv) Regulate the scope and timing of discovery;

(v) Issue and enforce subpoenas as authorized under 7 U.S.C. 2023(a) and these rules;

(vi) Summon and examine witnesses and receive evidence at the hearing;

(vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;

(viii) Admit or exclude evidence;

(ix) Hear oral argument on facts or law;

(x) Upon motion of a party, decide cases, in whole or in part, by non-oral hearing procedures under subpart C of this part where there is no disputed material issue of fact;

(xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(xii) Take all other actions authorized under the Act and these rules, including the extension of time upon motion of a party or *sua sponte* for cause shown.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

§ 283.20 Review by the Judicial Officer.

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under § 283.17(d), consideration of the review petition shall be stayed automatically pending resolution of the motion for reconsideration. If a motion for reconsideration is timely filed, a review petition may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(2) As provided in § 283.15(h), objections made before the ALJ regarding evidence or regarding a limitation on examination or cross-examination or other ruling may be relied upon in a Judicial Officer review.

(3) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(b) *Response to review petition.* Within 30 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(c) *Transmittal of the record.* (1) Whenever a review petition of an ALJ's initial decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal.

(2) Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of

fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) *Additional evidence.* If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter to the ALJ for consideration of such additional evidence.

(j) *Decision of the Judicial Officer on review.* (1) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(2) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ under this part.

(3) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination and contain a statement describing the right to seek judicial review.

(4) Judicial review must be sought within 30 days of service of the final notice of determination by the Judicial Officer pursuant to 7 U.S.C. 2023(a).

§ 283.21 Ex parte communications.

(a) *ALJ;-Judicial Officer.* At no time prior to the issuance of the final decision shall the ALJ or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the ALJ or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(b) *Parties; interested persons.* No party or other interested person shall make or knowingly cause to be made to the ALJ or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(c) *Procedure.* If the ALJ or Judicial Officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the appeal or review:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the ALJ or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(d) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

§ 283.22 Form; filing; service; proof of service; computation of time; and extensions of time.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the Hearing Clerk.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g., Motion for Extension of Time).

(3) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(b) *Filing.* Papers are considered filed when they are postmarked, or, received, if hand delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(e) *Computation of time.*

(1) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(2) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(f) *Extensions of time.* Requests for extensions of time shall be submitted to the ALJ, Chief Judge or the Judicial Officer prior to the expiration of the original due date. The time for the filing of any document or paper required or authorized under the rules in this part may be extended by the ALJ, Chief Judge or the Judicial Officer, if, in the judgment of the ALJ, Chief Judge or the Judicial Officer, there is cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

§ 283.23 Procedural matters.

(a) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(b) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

§ 283.24 Incorporation of procedures by reference.

Except as otherwise provided, the following procedures detailed in subpart B of this part shall apply to appeals of QC claims of less than $50,000: §§ 283.5 *Motion to Dismiss*; 283.6 *Answer*; 283.8 *Rebuttal or Amendment of Appeal or Answer*; 283.9 *Withdrawal of Appeal*; 283.10 *Consent Decision*; 283.18 *Motions and Requests*; 283.19 *ALJ's*; 283.20 *Review by the Judicial Officer*; 283.21 *Ex Parte Communications*; 283.22 *Filings; Service; Extensions of Time; and Computations of Time*; and 283.23 *Procedural Matters*.

§ 283.25 Filing appeals for QC claims of less than $50,000.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of less than $50,000 for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this section, within 10 days of receipt of the bill for collection from FNS for a QC claim of less than $50,000. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk.

(d) *Content of the notice of appeal.* (1) A notice of appeal, in order to be considered acceptable must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of less than $50,000 identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A true copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice and dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advise that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) That the State agency must file and serve its appeal petition, as set forth in § 283.22 not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists, and

(2) The nature of the relief sought.

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall file an answer, pursuant to § 283.6, not later than 60 days after the State agency submits its appeal petition.

§ 283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.

(a) If, after the filing of its appeal petition, the State agency does not believe that the summary procedure provided in this subpart is adequate for handling the appeal and that an oral hearing is necessary, the State agency may file, no later than the date established for the conclusion of any discovery pursuant to § 283.29, a motion that its appeal be handled under the procedures in subpart B of this part.

(b) The motion shall specify why the State agency believes that the summary procedure is inadequate and what harm will result if an oral hearing is not held.

(c) FNS will have 10 days from service of the State agency's motion that the appeal be handled under subpart B of this part to submit arguments either in support of or against the State agency's position.

(d) The ALJ will review the State agency's motion and the information submitted by FNS and decide which procedures shall be used in the appeal.

§ 283.27 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of the opportunity to file a cross motion for summary judgment pursuant to § 283.30. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such

motion and proposed decision, FNS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.28 Discovery.

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admissions and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with § 283.12(b).

§ 283.29 Scheduling conference.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference following the filing of a notice of appeal pursuant to § 283.25. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the scheduling conference shall be given. The ALJ may order each of the parties to furnish at the scheduling conference the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon;

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Scheduling conference.* At the scheduling conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) Stipulations of facts and of the authenticity, accuracy, and admissibility of documents;

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in § 283.28, must be completed;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for the filing of cross-motions for summary judgment and completion of other actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

§ 283.30 Cross motions for summary judgment.

Appeals filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B of this part in accordance with § 283.26. Cross motions for summary judgment shall be filed by the parties along with the appeal petition and answer or in accordance with the schedule established by the ALJ pursuant to § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties in accordance with the schedule established by the ALJ. Reply briefs may not exceed 15 pages in length, excluding exhibits.

§ 283.31 Review of the Record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FNS and the State agency.

(b) If the ALJ decides that additional information or briefing is required from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

(d) If the ALJ decides that oral argument is necessary on legal issues, the ALJ shall set a time for the oral arguments as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The oral arguments shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the argument be held at another location. The ALJ shall file a notice stating the time and place of the oral arguments. If any change in the time of the oral arguments is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of the oral arguments and made a part of the transcript or actual notice given to the parties.

(e) Oral argument shall not be transcribed unless so ordered in advance by the ALJ for cause shown upon request of a party or upon the ALJ's own motion.

§ 283.32 ALJ's initial decision.

(a) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency pursuant to § 283.8 or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. The ALJ may extend this deadline for cause shown.

(b) The ALJ shall prepare, upon the basis of the record, and shall file an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(c) Such initial decision shall constitute the final notice of determination for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

Dated: June 22, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–16003 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–U–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 118CE, Special Condition 23–ACE–76]

Special Conditions,; Ballistic Recovery Systems, Modified for Small General Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the supplementary type certification of the Ballistic Recovery Systems, Inc., parachute recovery system installed in small general aviation airplanes. This system is referred to as the GARD. Airplanes modified to use this system will incorporate novel or unusual design features for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE–100), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri, 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Ballistic Recovery System, Inc. (BRS), 9242 Hudson Boulevard, Lake Elmo, Minnesota 55042, filed an application for a supplemental type certificate (STC) to install the GARD–150 parachute recovery system on Cessna 150/A150 Series and 152/A152 Model Airplanes. Subsequently, they received the STC under Special Condition 23–ACE–33, dated November 17, 1987. The parachute recovery system is intended to recover an airplane in emergency situations such as mid-air collision, loss of engine power, loss of airplane control, sever structural failure, pilot disorientation, or pilot incapacitation with a passenger on board. The GARD–150 system, which is only used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

BRS followed their STC on the Cessna 150/A150 and 152/A152 Series with request for special conditions on the General Aviation Recovery Device (GARD) system that would be applicable to most general aviation airplanes. The nature of the parachute recovery system applies to most general aviation airplanes with similar configurations and characteristics. Separate special conditions for each airplane model are not needed.

Parachute recovery systems typically consist of a parachute packed in a canister mounted on the airframe. A solid propellant rocket motor or compressed air may deploy the canopy and is usually located on the side of the canister. A door positioned above the canister seals the canister, parachute canopy, and rocket motor from the elements and provides free exit when the canopy is deployed. These systems are deployed by a mechanical pull handle mounted so that the pilot and passenger can reach it. At least two separate and independent actions are required to deploy the system.

A multicable bridle attaches the canopy bridle to the airplane primary structure. The cable lengths are designed to provide the best airplane touchdown attitude. The cables are routed externally and covered with small frangible fairings from the fuselage exist holes to the attach points.

The applicants must supplement the FAA-approved Flight Manual as part of the STC. The supplement will describe the system, define the operating envelope with appropriate warnings, and define required system maintenance and inspection information. A separate FAA-approved Operating Manual describing the previous items will be provided for those airplanes that do not have an FAA-approved Flight Manual.

Recommended placards should be located near the pull handle in clear view of the pilot to identify the system and operating envelope, state deployment actions, and provide appropriate warnings. A warning placard should also be located on the canister near the rocket motor.

Discussion

The installation of parachute recovery systems in part 23, VLA, and primary category airplanes was not envisioned when the certification basis for these airplanes was established. In addition, the Administrator has determined that current regulations do not contain adequate or appropriate safety standards for a parachute recovery system; therefore, this system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(1) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane modification. Special conditions, as appropriate, are issued after public notice in accordance with § 11.49 (as amended October 25, 1989), as required by §§ 11.28 and 11.29(b). The special conditions become part of the type certification basis, as provided by § 21.17(a)(2).

The flight test demonstration requirements will ensure that the parachute recovery system will perform its intended function without exceeding its strength capabilities. Demonstrations will be required to show that the parachute will deploy in various specified flight conditions.

Occupant restraint requirements will ensure that airplanes modified with a parachute recovery system are equipped with a restraint system designed to protect the occupants from injury during parachute deployment and ground impact.

Requirements for parachute performance will ensure all of the following: (a) The parachute complies with the applicable section of TSO–C23c (SAE AS8015A) at the critical airplane weights. (b) The parachute deployment loads do not exceed the structural strength of the airplane. (c) The system will provide a ground impact that does not result in serious injury of the passengers. (d) The system will operate in adverse weather conditions.

The requirements for the functions and operations of the parachute recovery system will ensure all of the following: (a) There is no fire hazard associated with the system. (b) The system has adequate reliability. (c) The sequence of arming and activating the system will prevent inadvertent deployment. (d) The system can be activated from either the pilot's or the copilot's position by various sized people. (e) The system will be labeled to show its identification function and operating limitations. (f) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse

weather conditions, including high winds.

Requirements for protection of the parachute recovery system will ensure that the system is protected from deterioration due to weathering, corrosion, abrasion, and other causes; and that provisions are made to the parachute canister to provide adequate ventilation and drainage.

Requirements for a system inspection provision will ensure that adequate means are available to permit examination of the parachute recovery system components and that instructions for continued airworthiness are provided.

Requirements for operating limitations of the parachute recovery system will ensure that the system operating limitations are prescribed for inspection, repacking, and replacing the system's parachute deployment mechanism at approved intervals.

Discussion of Comments

Notice of Proposed Special Conditions, Docket No. 118CE, Notice No. 23–ACE–76 (59 FR 2786, January 19, 1994) proposed special conditions for small general aviation airplanes. The comment period for the notice closed March 21, 1994. Four comments were received from one commenter. All comments were concerning the flight portion of these special conditions.

The commenter believes that the wording of the proposed special conditions indicates that flight test may be required for each make and model of aircraft for which the GARD system will be installed. The commenter does not believe this is necessary for airplanes with similar characteristics such as configuration, weight, and speed. To support this position, the commenter cites TSO–C23c for emergency personnel parachutes that are certified according to suspended weight and maximum allowable deployment speed. The commenter states that significant configuration changes would be low wing versus high wing or a change in the position of the parachute main attach point relative to the aircraft center of gravity. A significant change in airplane characteristics could be defined as any variation that could potentially cause the airplane to react to parachute deployment different from the original tests.

In this case, a flight demonstration of satisfactory deployment would be required unless a reliable method of analysis is available.

The FAA agrees with the commenter that the wording of the proposal infers that the flight demonstrations are required for each airplane model receiving the STC. This was not the FAA's original intent with these special conditions. The FAA agrees with the commenter that the GARD system is intended to add a means of preventing a catastrophic crash when all other means of recovery are exhausted or made inoperative. To this end, this system adds to the overall safety of the airplane. Therefore, the FAA agrees with the commenter's approach to different airplanes with similar characteristics.

The commenter also believes that special condition 1(b)(3) should state: Maneuvering speed with 2g normal load, not Og normal load. The original flight tests included a 60 degree bank turn with a 2g normal load for one deployment condition. Essentially, the deployment condition was the airplane turning into the parachute deployment. The test evaluated both deployment during a turn and the force of the ballistics to eject the parachute away from the airplane in a way that would allow it to open. The possible concern was not having enough load on the parachute to properly inflate the canopy. The results on the original GARD–150 were satisfactory. The FAA's reason for requiring the Og test was to evaluate additional deployment loads against the airframe limits. In re-evaluating this requirement, the FAA believes that data from static tests and the stall condition deployment will adequately address the concerns. Additionally, since the 2g test requirement from the original GARD system was satisfactory, the FAA finds no reason to evaluate the opening during a 2g turn on each airplane that requires deployment testing. A 2g acceleration is the same regardless of the type airplane. If the GARD system had the force to fire the parachute away from the airplane while the airplane was turning toward the parachute, then the results should be the same for other airplanes.

The commenter thought that there should be an option of placarding the operating limitations as an alternative to testing at the never exceed speed 1(b)(i)(4) and in inverted flight for aerobatic aircraft 1(b)(ii). Satisfactory deployment would be demonstrated at a maximum placarded deployment speed with 1g normal load. This maximum placarded deployment speed should be greater than or equal to the structural cruising speed of the aircraft.

The FAA conducted a thorough evaluation of the first system to be STC'd on a certified airplane. The FAA's interest with follow-on modifications to similar airplanes is primarily to investigate deployment at the airplane's limits. It is realistic to expect pilots to deploy this system in an inadvertent spin, at minimum speed (stall), and at the never exceed speed. By testing at these limits, all conditions in between are covered. The only exception might be high g loads from aerobatic airplanes. Any situation where the GARD system is deployed will either be 1g or less (i.e., normal gliding flight through spins), or completely unloaded, or tumbling from a structural failure. It is not reasonable to expect any applicant to test for the tumbling after a structural failure. In an out-of-control situation (structural failure), the airplane could quickly reach its never exceed speed. So the requirement to deploy the GARD system at the never exceed speed will remain. However, since the argument for aerobatic airplane has been presented, including the operational reality of an inverted deployment, the FAA agrees with the commenter that the merits of requiring the test are far outweighted by the cost to conduct the test. Therefore, the option of placarding against operating the GARD system during aerobatics is supported.

Conclusion

In view of the design features discussed for the Ballistic Recovery Systems General Aviation Recovery Device (GARD), the following special conditions are issued. This action is a rule of general applicability and affects small general aviation airplanes with characteristics similar to those identified in these special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, and Signs and symbols.

Citation

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 101; and 14 CFR 11.28 and 11.49.

Adoption of Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration issues the following special conditions as part of the supplemental type certification basis for the BRS GARD system installed in small general aviation airplanes:

1. Flight Test Demonstration

(a) The system must be demonsrated in flight to satisfactorily perform its intended function, without exceeding

the system deployment load factors, for the critical flight conditions, except as allowed in 1(c).

(b) Satisfactory deployment of the parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(1) Power off stall with slow entry,

(2) Spin with deployment at one turn,

(3) Never exceed speed with 1g normal load.

(c) Flight demonstrations are not required for airplanes with similar characteristics, (such as configuration, weight, and speed) to airplanes that have already received an STC for the installation. Only airplanes where a significant change from airplanes that have already received an STC need to include a flight demonstration. A significant change in airplane characteristics could be defined as any variation that could potentially cause the airplane to react to parachute deployment different from original tests.

2. Occupant Restraint

Each seat in an airplane modified with the parachute recovery system must be equipped with a restraint system, consisting of a seat belt and shoulder harness, that will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

3. Parachute Performance

(a) The parachute must comply with the applicable requirements of TSO–C23c, or an approved equivalent, for the critical airplane weights.

(b) The system limit load factor for deployment must not exceed 80 percent of the airplane ultimate load factor.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the parachute deployed, the airplane can impact the ground in various adverse weather conditions, including winds up to 15 knots, without endangering the airplane occupants.

4. System Function and Operations

(a) It must be shown that there is no fire hazard associated with activation of the system.

(b) The system must be shown to function reliably and to perform its intended function.

(c) It must be shown that arming and activating the system can only be accomplished in a sequence that makes inadvertent deployment extremely improbable.

(d) It must be demonstrated that the system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(e) The system must be labeled to show its identification, function, and operating limitations.

(f) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

5. System Protection

(a) All components of the system must provide protection against deterioration due to weathering, corrosion, abrasion, and other causes.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

6. System Inspection Provisions

(a) Instructions for continued airworthiness must be prepared for the system that meet the requirements of § 23.1529.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during the required inspection of the system.

7. Operating Limitations

(a) Operating limitations must be prescribed to ensure proper operation of the system within the approved flight envelope of the airplane.

(b) Operating limitations must be prescribed for inspecting, repacking, and replacing the parachute and deployment mechanism at approved intervals.

Issued in Kansas City, Missouri on June 22, 1994.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16233 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–33–M

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14 CFR Part 39

[Docket No. 94–NM–85–AD; Amendment 39–8956; AD 94–14–04]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This action requires inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, inspection of the fastener holes, and modification or repair. This amendment is prompted by a report of cracking in the lower spar chord of an engine strut. The actions specified in this AD are intended to prevent cracking in the lower spar chord of the engine strut, which could result in the inability of the strut to carry required engine support loads.

DATES: Effective July 21, 1994.

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

Comments for inclusion in the Rules Docket must be received on or before September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Recently, the FAA received a report from an operator that cracking was found in the lower spar chord of a strut on a Boeing Model 757 series airplane equipped with a Rolls Royce Model RB211–535 series engine. This cracking penetrated through the inboard flange of the chord and propagated into the skin flange of the chord. This fatigue crack in the skin flange was approximately five inches in length.

Analysis indicates that stiffener straps, which were installed on early

production airplanes, increase the likelihood of cracking in the spar chords. These stiffener straps are no longer installed on later production airplanes.

Continued operation with the stiffener straps installed will cause fatigue cracking or propagation of existing cracks in the lower chord. Such cracking could result in the inability of the strut to carry required engine support loads, and ultimately could lead to separation of the engine from the strut.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0028, dated March 31, 1994, that describes procedures for eddy current inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, open hole eddy current inspection of the fastener holes, and modification. This modification, which includes installing fasteners, a strut pneumatic duct, a fire extinguisher line, a bulkhead coverplate, and a panel, will decrease the likelihood of fatigue cracking in the lower spar chord of the engine strut.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 757 series airplanes of the same type design, this AD is being issued to prevent cracking of the lower spar chord of the engine strut. This AD requires eddy current inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, open hole eddy current inspection of the fastener holes, and modification. The actions are required to be accomplished in accordance with the service bulletin described previously. In certain cases, this AD requires repair of cracking in accordance with an FAA-approved method.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–85–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–04 Boeing: Amendment 39–8956. Docket 94–NM–85–AD.

Applicability: Model 757 series airplanes having airplane line numbers 2, 4, 5, 9 through 13 inclusive, 21, 26, 114, and 115, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the lower spar chord of the engine strut, which could result in the inability of the strut to carry required engine support loads, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an eddy current inspection to detect cracking of the lower chord, in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, prior to the accumulation of 1,500 landings after accomplishment of the inspection, remove the stiffener straps from the mid-chord of the inboard and outboard sides of the strut, and perform an open hole eddy current inspection to detect cracking of the fastener holes in the mid-chord, in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994.

(1) If no cracking is detected in the mid-chord strut during the inspection required by paragraph (b) of this AD, prior to further flight, modify in accordance with the service bulletin.

(2) If cracking is detected in the mid-chord strut during the inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) If cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, remove the stiffener straps from the mid-chord of the inboard and outboard sides of the strut, and perform an open hole eddy current inspection to detect cracking of the fastener holes in the mid-chord, in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994.

(1) If no cracking is detected in the mid-chord strut during the inspection required by

paragraph (c) of this AD, prior to further flight, modify in accordance with the service bulletin.

(2) If cracking is detected in the mid-chord strut during the inspection required by paragraph (c) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

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

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

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

(f) The inspections, strap removal, and modification shall be done in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 21, 1994.

Issued in Renton, Washington, on June 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15738 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–159–AD; Amendment 39–8963; AD 94–14–15]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Aviation Model Mystere-Falcon 50 series airplanes, that requires replacement of certain attachment clamps installed on the engine exhaust ducts with improved clamps. This amendment is prompted by reports of failures of certain attachment clamps due to fatigue cracking. The actions specified by this AD are intended to prevent such failures, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm.

DATES: Effective August 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 50 series airplanes was published in the Federal Register on November 22, 1993 (58 FR 61636). That action proposed to require replacement of certain attachment clamps installed on the engine exhaust ducts with improved clamps.

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

One commenter requests that paragraph (b) of the rule be revised to indicate that instructions for verifying that the clamp screw is straight are contained in Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993 (which is the service bulletin cited elsewhere in the proposed rule). The commenter notes that those instructions indicate that the verification cannot be made if the clamp is installed; the clamp must be removed from the tail pipe attachment in order to determine if it is bent or not. The FAA concurs with the commenter's request and has revised the final rule accordingly.

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

The FAA estimates that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,315, or $55 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–15 Dassault Aviation: Amendment 39–8963. Docket 93–NM–159–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 2 through 216, inclusive; equipped with exhaust duct attachment clamps, part number (P/N) NH1002299–10 or P/N NH1007763–10; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of attachment clamps installed on the engine exhaust ducts, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm, accomplish the following:

(a) For airplanes equipped with exhaust duct attachment clamps having P/N NH1002299–10: Within 300 flight hours after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, replace attachment clamps having P/N NH1002299–10 with attachment clamps having P/N NH1007763–10, in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(b) For airplanes equipped with exhaust duct attachment clamps having P/N NH1007763–10: Within 1,400 flight hours after the effective date of this AD, inspect the attachment clamps installed on the engine exhaust ducts to verify if the clamp screw is straight (not bent), in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(1) If the clamp screw is straight, prior to further flight, verify if the tightening torque value of the screw is marked on the attachment clamp as follows: "NORMAL NET TORQUE 100–120 IN-LBS."

(i) If the marking is as specified in paragraph (b)(1) of this AD, no further action is required.

(ii) If the marking is not as specified in paragraph (b)(1) of this AD, prior to further flight, erase the incorrect marking and replace it with the correct tightening torque value.

(iii) After correcting the marking, prior to further flight, ensure that the clamp screw is secured to the tightening torque value specified in paragraph (b)(1) of this AD.

(2) If the clamp screw is bent, prior to further flight, replace the discrepant attachment clamp with a new attachment clamp having the same part number, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(c) As of the effective date of this AD, no person shall install an exhaust duct attachment clamp having P/N NH1007763–10 on any airplane, unless that attachment clamp is marked "NORMAL NET TORQUE 100–120 IN-LBS."

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

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

(f) The actions shall be done in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 5, 1994.

Issued in Renton, Washington, on June 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16157 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AGL–14]

Establishment of Class E Airspace; Griffith, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 Standard Instrument Approach Procedure (SIAP) to Griffith-Merrillville Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 SIAP to Griffith-Merrillville Airport (59 FR 22571). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL for Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 SIAP to Griffith-Merrillville Airport. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL IN E5 Griffith, IN [New]

Griffith-Merrillville Airport
(lat. 41°31'11" N., long. 87°24'04" W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Griffith-Merrillville Airport, excluding that area within the Chicago, IL Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on June 21, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–16267 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 26180; Amendment No. 91–242]

RIN 2120–AD19

Emergency Locator Transmitters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule [FR Doc. 94–14677] on emergency locator transmitters that was published on June 21, 1994 (59 FR 32050). A portion of the rule language that affects the installation of replacement transmitters was inadvertently omitted. This document corrects that omission.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT:

Phil Akers, Aircraft Engineering Division (AIR–120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9571.

SUPPLEMENTARY INFORMATION: On June 21, 1994, the FAA published a final rule amending the regulations for emergency locator transmitters (ELT's) (59 FR 32050). As discussed in the preamble to that final rule, the FAA intended to include in the language of § 91.207 a date after which ELT's that meet Technical Standard Order (TSO) C91 could no longer be installed in aircraft. That language was inadvertently omitted from the amendment to Section 91.207. This document presents only the omitted rule language for paragraphs (a)(1) and (a)(2) of § 91.207.

Correction of Publication

Accordingly, the publication on June 21, 1994 of the final rule that was the subject of FR Doc. 94–14677 is corrected as follows:

§ 91.207 [Corrected]

1. On page 32057, in the second column, in § 91.207, in paragraph (a)(1), in the last line, add the words ", except that after June 21, 1995, an emergency locator transmitter that meets the requirements of TSO–C91 may not be used for new installations" immediately after the word "operations".

2. On page 32057, in the second column, in § 91.207, in paragraph (a)(2), in the last line, add the words ", except that after June 21, 1995, an emergency locator transmitter that meets the requirements of TSO–C91 may not be used for new installations" immediately after the word "condition".

Issued in Washington, DC, on June 29, 1994.

Henri P. Branting,

Acting Manager, Aircraft Engineering Division.

[FR Doc. 94–16269 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 17

[Docket No. R–94–1738; FR–3595–F–01]

RIN 2501–AB70

Administrative Claims

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule brings up to date the Department's existing regulations relating to administrative claims to reflect current statutory authority for federal agencies to compromise, terminate or suspend collection activities on claims of the Government up to $100,000 without prior approval from the Department of Justice. The existing regulation limits such collection activities to debts up to $20,000. The rule also makes two other technical amendments—one relating to the assessment of interest on claims due to the Department and one relating to the distribution of certain final decisions on indebtedness made by HUD Deputy Assistant Secretaries.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT:

Albert M. Miller, Departmental Claims Officer, room 2206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, voice (202) 708–3310, TDD (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 3711(a) of title 31, United States Code authorizes the head of an executive or legislative agency to compromise (or to suspend or end collection action) on a claim of the Government of not more than $100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe provided that the claim has not been referred to another executive or legislative agency for further collection action. Prior to amendment of this section by the Administrative Dispute Resolution Act (Pub. L. 101–552, 104 Stat. 2736, Approved November 15, 1990) this authority of agencies to compromise, or to suspend or end collection actions on government claims was limited to claims of $20,000 or less.

Existing HUD regulations (24 CFR Part 17 (Administrative Claims) contain a number of provisions setting forth the now out of date dollar threshold of $20,000 rather than the $100,000 threshold which the statute (31 U.S.C. 3711(a)) currently authorizes. This rule

updates HUD regulations (Subpart C of 24 CFR Part 17—Procedures for the Collection of Claims by the Government) to reflect the new $100,000 statutory threshold.

Current regulations—17 CFR 17.72(e)—provide for assessment of interest on claims due the Department at 7 percent. This rule revises this provision to provide for the assessment of interest at the Treasury rate in effect when the demand for payment is made, as provided in the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, and in the joint regulations of the Attorney General and Comptroller General at 4 CFR Parts 101–105 (joint regulations).

The rule also revises section 17.72(e) which currently reads:

> When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation.

The Debt Collection Act of 1982 specifically provides for the assessment of interest and, in 1984, the joint regulations were amended to reflect the provisions of that Act. Reference to the "U.S. Rule" was properly deleted from the amended joint regulations and a reference to 31 U.S.C. 3717, the statutory provision authorizing agencies to assess interest on debts, was substituted. In this rule, as was done in the amended joint regulations, the obsolete reference to the so called "U.S. Rule" is deleted.

Finally, in 24 CFR 17.110, a section relating to final decisions on amounts of indebtedness made by HUD Deputy Assistant Secretaries or their designees, paragraph (b) providing that copies of the final decisions will be distributed to the General Counsel, the Office of Finance and Accounting, and the debtors (or their attorneys or representatives if applicable) is revised so that it only provides for copies to debtors (or their attorneys or representatives, if applicable). The change reflects HUD policy that any provisions relating to distribution of documents within the Department should not be included in a regulation designed to inform the public of its rights and obligations. Such provisions are more appropriate in a handbook or other internal HUD directive.

Due to the strictly technical nature of this rule, and the fact that the statutory provisions involved are, at any rate, self enforcing, the Department has determined that notice and public comment procedure under Title 5 of the United States Code is unnecessary and is therefore issuing this document as a final rule.

Procedural Matters

Regulatory Flexibility

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is technical in nature. It effects no substantive changes in HUD programs or policies.

Semiannual Agenda

This rule was listed as item number 1532 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20435) under Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is technical in nature and makes no significant change in existing HUD policies or programs.

Environment

An environmental assessment is unnecessary, since internal administrative procedures whose content does not constitute a development decision affecting the physical condition of specific project areas or building sites are categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

List of Subjects in 24 CFR Part 17

Administration practice and procedure, Claims, Government employees, Income taxes, Wages.

Accordingly, 24 CFR part 17 is amended to read as follows:

PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for 24 CFR part 17 is revised to read as follows:

Authority: 28 U.S.C. 2672; 42 U.S.C. 3535(d), unless otherwise noted.

2. Paragraph (a) of § 17.60 is revised to read as follows:

§ 17.60 Scope and definitions.

(a) *Scope.* This subpart sets forth the regulations of the Secretary of Housing and Urban Development implementing the Federal Claims Collection Act of 1966, as amended by the Federal Debt Collection Act of 1982 (31 U.S.C. 3701 et seq.) (the Act), in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR parts 101 through 105. The Act:

(1) Requires the Secretary or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the Department; and

(2) Authorizes the Secretary or his designee to compromise claims that have not been referred to another executive or legislative agency for further collection action where the claim does not exceed $100,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery.

* * * * *

3. Section 17.62 is revised to read as follows:

§ 17.62 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding $100,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than $100,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed $100,000 exclusive of interest.

4. Paragraph (a) of § 17.64 is revised to read as follows:

§ 17.64 Referral of claims to the Assistant Secretary for Administration.

(a) *Authority of the Assistant Secretary for Administration.* The Assistant Secretary for Administration shall exercise the powers and perform the duties of the Secretary to compromise, or to suspend or terminate collection action on all Department claims not exceeding $100,000 exclusive of interest, except as provided in § 17.65 and paragraph (b) of this section. When initial attempts at collection by the office having responsibility for such claims have not been fully successful, the claim file shall be forwarded to the Assistant Secretary for Administration for further administrative collection procedures. Claims shall be referred to the Assistant Secretary for Administration well within the applicable statute of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

* * * * *

5. Paragraph (b) of § 17.65 is revised to read as follows:

§ 17.65 Authority of offices to compromise claims or suspend or terminate collection action.

* * * * *

(b) *Claims arising under certain programs.* (1) The office primarily responsible for the following programs of the Department is authorized, in those cases where initial collection attempts are not wholly successful, to compromise or to suspend or terminate collection action on claims not exceeding $100,000 with respect to:

(i) A claim under title I of the National Housing Act;

(ii) A claim on a rehabilitation loan account under section 312 of the Housing Act of 1964;

(iii) A claim against tenants or former tenants of properties acquired by, or under the custody of, the Secretary or held by him as mortgagee in possession; or

(iv) A claim arising out of the operational (nonadministrative) activities of the Government National Mortgage Association (GNMA).

(2) However, no office shall undertake to compromise or terminate any collection action excluded under § 17.64(b).

6. Paragraph (e) of § 17.72 is revised to read as follows:

§ 17.72 Methods of collection and imposition of late charges.

* * * * *

(e) *Interest.* Where prejudgment interest is not mandated by statute, contract or regulation, the minimum rate of interest to be charged on delinquent debts is the Tax and Loan Account Rate for the U.S. Treasury (also known as the Current Value of Funds rate) as prescribed and published semiannually by the Secretary of the Treasury in the **Federal Register**, in accordance with 31 U.S.C. 3717. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claim unless the statute under which the claim arises authorizes the collection of such interest.

* * * * *

7. Paragraph (b) of § 17.110 is revised to read as follow:

§ 17.110 Determination of indebtedness and appeal from determination.

* * * * *

(b) Copies of the DAS decision will be distributed to the debtor and the debtor's attorney or other representative, if applicable.

Dated: June 22, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–15845 Filed 7–5–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–060]

RIN 1218–AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; administrative stay.

SUMMARY: OSHA's final rule on Personal Protective Equipment for General Industry, which was published in the **Federal Register** on April 6, 1994 (59 FR 16334), is scheduled to become effective on July 5, 1994. OSHA is administratively staying the effective date of certain provisions of § 1910.132 of the final rule (requirements for hazard assessment and training) until October 5, 1994.

DATES: Effective July 5, 1994, the effective date for paragraphs (d) and (f) of 29 CFR 1910.132 will be administratively stayed until October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA has received several requests to extend the effective date of paragraph (d), hazard assessment, and paragraph (f), training. It is contended that many employers will not be able to complete the required hazard assessment and training before the effective date.

OSHA has also received petitions from the American Forest & Paper Association (AF&PA), the American Iron and Steel Institute (AISI), and the Chocolate Manufacturers Association (CMA) to delay the effective date of the provisions for hazard assessment and training.

It has been asserted that a worksite hazard assessment, where not previously performed, could be a major undertaking. Also, longer periods of time may be necessary if an employer determines that there is a need for task-specific assessments or training.

For example, in its petition to the Agency, AISI stated:

> In some cases, employers may determine that there is a need for task-specific hazard assessments or training. As the compliance effort moves along the continuum from generic toward task-specific, a substantially longer period of time would be required to comply with the final rule.

It has also been asserted that it would take a substantial amount of time to develop and implement the type of training program that is envisioned by the final rule. Even where training programs do exist, some may not meet all of the requirements of the final rule, and employers would not be able to implement changes to these programs before the effective date. In its petition to OSHA, AF&PA remarked:

> While some employers may have performed the required hazard assessments and provided the required training, they may not be fully comfortable certifying that their employees have the necessary knowledge and abilities with respect to PPE without some form of verification. Some employers may find gaps or weak points in their existing PPE programs. Other employers will find that their existing PPE programs are so informal that they will conclude they must begin from "ground zero."

After evaluating these comments, OSHA has decided that it is reasonable to allow an additional amount of time for employers to meet the requirements pertaining to the hazard assessment (§ 1910.132(d)) and training (§ 1910.132(f)).

Therefore, the Agency is granting an administrative stay of the effective date for paragraphs (d) and (f) of § 1910.132 until October 5, 1994 to allow employers an additional amount of time to achieve compliance with these two paragraphs. OSHA expects that employers will continue to expedite their efforts to fully comply with all of the provisions of the standard. It is also important to note that the effective date for all of the other provisions of the final rule remains July 5, 1994.

List of Subject in 29 CFR Part 1910

Eye protection; Fact protection; Foot protection; Hand protection; Footwear; Hard hats; Head protection; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

Accordingly, effective July 5, 1994, the effective date for paragraph (d), hazard assessment, and paragraph (f), training, of 29 CFR 1910.132 is administratively stayed until October 5, 1994.

Signed at Washington, DC, this 29th day of June, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–16241 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

AGENCY: U.S. Army Soldier Support Center, Fort Benjamin Harrison, DOD.

ACTION: Interim Rule.

SUMMARY: This action establishes 32 CFR Part 552, subpart K, Restriction of training Areas on Fort Benjamin Harrison, Indiana. This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized vehicles, on the Army training areas of Fort Benjamin Harrison, Indiana, as defined in § 552.134 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison. Paragraph numbering has been changed to permit flexibility in paragraph numbering in Part 552.

DATES: This interim rule is effective July 6, 1994. However, written comments will continue to be received until August 5, 1994.

ADDRESSES: Commander, Soldier Support Center, ATTN: Directorate of Information Management, Fort Benjamin Harrison, Indiana 46216–5151.

FOR FURTHER INFORMATION CONTACT: Cheri Armstrong, (317) 542–4909.

SUPPLEMENTARY INFORMATION: U.S. Codes referenced in this subpart can be obtained from the Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandra, VA 22331–0302.

Executive Order 12291

This interim rule has been classified as nonmajor.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This proposed rule does not have a significant impact on small entities.

Paperwork Reduction Act

This interim rule does not contain new reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552

Military personnel, Government employees.

Accordingly, subpart K to 32 CFR part 552, is added to read as follows:

Subpart K—Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

Sec.

552.140 Purpose.
552.141 Applicability.
552.142 References.
552.143 Definitions.
552.144 Procedures.
552.145 Violations.

Authority: 16 U.S.C. 470; 1531–1543; 18 U.S.C. 1382; 50 U.S.C. 797

Subpart K—Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

§ 552.140 Purpose.

(a) This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized, on the army training areas of Fort Benjamin Harrison, Indiana, as defined in § 552.134 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison, Indiana.

(b) These restrictions are established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve the combat readiness of the U.S. Armed Forces. Training conditions exist within these areas which could be dangerous to unauthorized persons entering these areas.

(c) In addition, these restrictions have been established to prevent property damage, threatening of endangered flora and fauna in the areas, and to prevent the harassment of protected species such as the Blue Heron and the Indiana Bat by any person or persons.

§ 552.141 Applicability.

The restrictions outlined in this subpart apply to all individuals, with the exception of soldiers and Army civilian employees and authorized contractors, who may enter the restricted areas in the performance of their official duties.

§ 552.142 References.

Requried and related publications are listed below. U.S. Codes referenced in this subpart can be obtained from the Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandria, VA 22331–0302.

(a) 16 U.S.C. 1531–1543.

(b) 16 U.S.C. 470.

(c) Title 18, U.S.C. 1382.

(d) Internal Security Act of 1950, section 21 (50 U.S.C. 797).

(e) Army Regulation 420–74.

(f) 10 U.S.C. 801–940

(g) Article 92, Uniform Code of Military Justice.

§ 552.143 Definitions.

(a) For the purpose of this subpart, restricted areas on the installation of Fort Benjamin Harrison, Indiana area defined as training areas A thru J, to

include the golf course. A map defining these areas is located in the Directorate of Plans, Training, and Mobilization, Security, Plans and Operations Division, Training Branch, Building 600, Room B, Fort Benjamin Harrison, Indiana.

(b) Unauthorized motor and non-motorized vehicles are defined as any wheeled or tracked vehicle. This may include, but not limited to, bicycles, ATV, snow mobiles, motor cycles, automobiles, trucks, etc.

§ 552.144 Procedures.

(a) Except for the soldiers, Army civilians and authorized contractors who enter the restricted areas in the performance of their official duties, entry of unauthorized vehicles is prohibited for any purpose whatsoever without the advanced consent of the Commander, United States Army Soldier Support Center (USASSC), Fort Benjamin Harrison, Indiana, or his/her authorized representative.

(b) Any person or group of persons desiring advanced consent shall, in writing, submit a request to the following address: HQ, USASSC and Fort Benjamin Harrison, ATTN: Public Affairs Office, Building 600, Fort Benjamin Harrison, Indiana 46216–5040.

§ 552.145 Violations.

(a) Any person/persons entering or remaining on any training area as defined in § 552.134 without the advance consent of the Commander, USASSC, or his authorized representative, shall be subject to the penalties prescribed by § 552.133 of this subpart, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined for not more than $500.00 or imprisoned not more than six months, or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5,000.00 or imprisonment for not more than 1 year as provided in § 552.133(d) of this subpart.

(c) In addition, violation of this subpart by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801–940) is a violation of Article 92 of the Uniform Code of Military Justice.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–15444 Filed 7–5–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–4210–06; AA–9193, F–14223]

43 CFR Public Land Order 7064

Partial Revocation of Secretarial Order dated February 9, 1940, as Modified, and Modification of Public Land Order No. 5150, as Amended, for Conveyance of Land to the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order, as modified, insofar as it affects 80.13 acres of public land withdrawn for Air Navigation Site No. 136 at Thompson Pass. The land is no longer needed for the purpose for which it was withdrawn. This action also modifies a public land order to allow the State of Alaska's existing application for selection to attach, and classifies the land as suitable for conveyance of the land to the State, if such land is otherwise available. If not conveyed to the State, the land will continue to be subject to the terms and conditions of Public Land Order No. 5150, as amended, and any other withdrawal of record. This order does not otherwise change the provisions or limitations of Public Land Order No. 5150, as amended, or any other withdrawal of record.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988), and by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated February 9, 1940, as modified, which withdrew public land at Thompson Pass for Air Navigation Site No. 136, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Located within T. 8 S., R. 3 W., described as U.S. Survey No. 5672.

The area described contains 80.13 acres.

2. Public Land Order No. 5150, as amended, which withdrew public lands as a utility and transportation corridor, is hereby modified to allow conveyance of the land described above to the State of Alaska, if such land is otherwise available.

3. Subject to valid existing rights, the land described above is hereby classified as suitable for conveyance to the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 US.C. note prec. 21 (1988), or Section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

4. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. If not conveyed to the State, the land will continue to be subject to the terms and conditions of Public Land Order No. 5150, as amended, and any other withdrawal of record.

5. This order does not change any provisions or limitations of Public Land Order No. 5150, as amended, or any other withdrawal of record except as expressly provided above.

Dated: June 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16245 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[I.D. 062994E]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment of the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure normally ends on July 15 each year. Because biological data indicate that brown shrimp leaving the Texas estuaries will have reached the desired size by July 7, 1994, the ending date is changed to this earlier date. The Texas closure is intended to prohibit the harvest of brown shrimp during their major period of emigration

from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 13, 1994, to 30 minutes after sunset, July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The FMP's implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that an early ending of the Texas closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate that ending the closure on July 7, 1994, will provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for ending the Texas closure is changed from 30 minutes after sunset, July 15, 1994, to 30 minutes after sunset on July 7, 1994. During the closure, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100–fathom (183–m) depth contour. The waters of Texas are also closed during this period.

Classification

This action is authorized by 50 CFR 658.25 and has been determined to be not significant for purposes of E.O. 12866.

Dated: June 29, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16306 Filed 6–30–94; 4:41 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 062794B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Recision of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Atka mackerel in the Central Aleutian District (CAD) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the CAD was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) as 37,846 metric tons (mt). The directed fishery for Atka mackerel was closed on June 7, 1994 (59 FR 29964, June 10, 1994). NMFS has determined that as of June 11, 1994, 2,201 mt remain unharvested

The Director, Alaska Region, NMFS, has determined that the 1994 TAC for Atka mackerel in the CAD has not been reached. Therefore, NMFS is rescinding the June 7, 1994, closure and is reopening directed fishing for Atka mackerel in the CAD, effective at 12 noon, A.l.t., July 4, 1994.

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16305 Filed 6–30–94; 4:41 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 128
Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–26–AD]

Airworthiness Directives; The Enstrom Helicopter Corporation Model F–28A, F–28C, F–28C–2, 280, and 280C Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to The Endstrom Helicopter Corporation Model F–28A, F–28C, 280, and 280C series helicopters, that currently requires an initial and repetitive visual inspections of the upper swashplate bearings for corrosion, and replacement of defective upper swashplate bearings with airworthy bearings. This action would require that the visual inspections apply to both the upper and lower swashplate bearings (bearings); expand the applicability to those affected helicopters manufactured prior to January 1, 1981; establish a retirement life of 1,200 hours' time-in-service for certain bearings; and provide a corrected upper swashplate bearing part number. This proposal is prompted by the necessity to require visual inspection so the lower swashplate bearings; expand the applicability to include the Model F–28C–2 helicopter; establish a retirement life for certain bearings; and correct the upper swashplate bearing part number from the existing AD. The actions specified by the proposed AD are intended to prevent failure of the bearings and subsequent loss of control of the helicopter.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–26–Ad, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meachum Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joe McGarvey, Aerospace Engineer, Chicago Aircraft Certification Office, Airframe Branch, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018, telephone (708) 294–7136, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–26–Ad." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–26–Ad, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On March 19, 1976, the FAA issued AD 76–01–11, Amendment 39–2560, (41 FR 13906, April 1, 1976), to require an initial and repetitive visual inspection of the upper swashplate bearing, part number (P/N) Z993L13XR3B, for corrosion, and replacement of corroded upper swashplate bearings. That action was prompted by three reports of upper swashplate bearing failures that were attributed to corrosion. These failures occurred between 205 and 586 hours' time-in-service (TIS). In two of these incidents, the probable cause of the upper swashplate bearing failures was corrosion of the balls and race due to water impregnating the housing after the loss of lubricant. This led to a spalling interaction between the balls and race, resulting in upper swashplate bearing failure. After reviewing the data, the FAA has determined that corrosion of either upper or lower bearings (bearings) could create an unsafe condition. These conditions, if not corrected, could result in failure of the bearings and subsequent loss of control of the helicopter.

Since the issuance of that AD, improved and modified bearings have been approved by the FAA for these model helicopters. Additionally, the manufacturer has issued The Enstrom Helicopter Corporation Service Information Letter (SIL) No. 0110, Revision B, dated March 18, 1993, that extends the previous visual inspections to include the Model F–28C–2 helicopters. The SIL describes an approved swashplate modification and indicates that the SIL should only apply to those affected helicopters manufactured prior to January 1, 1981. In addition, a swashplate modification that would constitute terminating action for the requirements of this AD has been approved.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 76–06–11 to require

visual inspections of the lower swashplate bearings; expand the applicability to the Model F–28C–2 helicopter; establish a retirement life of 1,200 hours' time-in-service for certain upper and lower swashplate bearings; and correct the upper swashplate bearing part number in the existing AD. This proposed AD would also provide an optional terminating action from the requirements of this AD and limit the applicability of the AD requirements to those affected model helicopters manufactured prior to January 1, 1981.

The FAA estimates that 660 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,400 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,105,500.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2560 (41 FR 13906, April 1, 1976), and by adding a new airworthiness directive (AD), to read as follows:

The Enstrom Helicopter Corporation: Docket No. 93–SW–26–AD. Supersedes AD 76–06–11, Amendment 39–2560.

Applicability: Model F–28A, F–28C, F–28C–2, 280, and 280C helicopters, manufactured prior to January 1, 1981, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper and lower swashplate bearings (bearings) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours' time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' TIS since the last inspection, perform a visual inspection of the upper swashplate bearing, P/N Z993L13X3B, bearing number SKF 6013–RS, or ECD013–13, and lower swashplate bearing, P/N 5201SBKZZ–ABEC, or ECD009–11, for corrosion as follows:

(1) Lower the swashplate to lowest position with the collective control.

(2) Remove the plastic bearing seal using a blunt scribe.

(3) Using an inspection mirror, visually inspect the bearings for grease lubricant and any evidence of corrosion. Rotate the bearings and housing to reposition balls and race for complete inspection. For bearings found free of corrosion or defects, repack them with Exxon ANDOK–B grease or any MIL–G–18709A grease, and reinstall them in accordance with the applicable maintenance manual.

(b) Replace any unairworthy bearing with an airworthy bearing in accordance with the applicable maintenance manual.

(c) Before further flight, after the effective date of this AD, remove all upper and lower swashplate bearings having 1,200 hours' or more TIS, and replace them with airworthy bearings. For bearings with less than 1,200 hours' TIS on the effective date of this AD, replace the bearings on or before attaining 1,200 hours' TIS.

(d) The owner may elect to install revised upper swashplate bearing housing, P/N 28–16108–2, and lower swashplate bearing housing, P/N 28–16361–1, that are equipped with grease fittings and integral bearing shields as described in The Enstrom Helicopter Corporation Service Information Letter No. 0110, Revision B, dated March 18, 1993. This would constitute terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Chicago Aircraft Certification Office.

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

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

Issued in Fort Worth, Texas, on June 27, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–16273 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–42]

Proposed Establishment of Class E Airspace: Springdale, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Springdale, AR. Currently, Springdale, AR has Class D airspace during the hours of operation of the Springdale Air Traffic Control Tower. This action is proposing to provide controlled airspace, Class E, upward from the surface to contain instrument flight rule (IFR) operations during the hours that the control tower is closed. The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations during the hours that the control tower is closed at Springdale, AR.

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–42, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Blvd., Room 662, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–222–5591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–42." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 2601 Meacham Blvd., Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications 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 that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Springdale, AR. Controlled airspace to the surface is needed during the hours that the control tower is closed to contain IFR operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace, during the hours that the control tower is closed, for IFR operations at Springdale Regional Airport, Springdale, Arkansas.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 958 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002: Class E. airspace areas designated as a surface area for an airport

* * * * *

ASW AR E Springdale, AR [New]

Springdale Municipal Airport, AR
(Latitude 36°14'47" N., longitude 94°07'16" W.)
Razorback VORTAC
(Latitude 36°14'47" N., longitude 94°07'17" W.)

That airspace within a 4.1-mile radius of Springdale Municipal Airport and within 1.3 miles each side of the 358° and 178° radials of the Razorback VORTAC extending from the 4.1-mile radius to 4.6 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Larry D. Gray,
Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–16234 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–045]

Personal Protective Equipment for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the rulemaking record for the proposed revision of the regulation of personal protective equipment for shipyard employment (53 FR 48150, November 29, 1988) to incorporate the rulemaking record developed for the recently revised regulation of personal protective equipment for general industry (Docket S–060, final rule published in 59 FR 16334, April 6, 1994) and the record for the proposed regulation of personal protective equipment (fall protection equipment

for general industry) (Docket S–057, 55 FR 13423, April 10, 1990). While the shipyard rulemaking on personal protective equipment (PPE) generated 10 comments, the general industry rulemakings generated hundreds of comments and several thousand pages of hearing testimony regarding PPE issues. The Agency believes the regulation of PPE in shipyard and general industry employment should be consistent, in order to facilitate compliance and effective employee protection. OSHA has determined that the information in Dockets S–060 and S–057 is relevant to full consideration of the issues raised by the shipyard PPE proposal, and that it is appropriate to reopen the record to incorporate those materials and to allow the public an opportunity to comment. This notice also raises specific PPE issues arising out of the general industry rulemakings for public comment.

DATES: Comments on the issues raised in the notice of reopening must be postmarked by August 22, 1994.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. S–045A, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1988, OSHA proposed to revise the personal protective equipment (PPE) requirements in the shipyard employment standards (part 1915, subpart I) (53 FR 48150). The proposal updated references to national consensus standards and added requirements for hazard assessment, proper selection and care of PPE, training, lifesaving equipment and personal fall protection equipment. The written comment period ended on February 27, 1989. The Agency received 10 comments on the proposed rule. There were no hearing requests.

On August 16, 1989, OSHA proposed to update the existing general industry standards (part 1910, subpart I, Docket S–060) for eye and face (§ 1910.133), head (§ 1910.135) and foot (1910.136) PPE and to add generic requirements for hazard assessment, proper selection of PPE, prohibition on use of damaged or defective PPE and training in the proper use of PPE (§§ 1910.132 (d) through (f)) (54 FR 33832). The proposed general industry revisions were consistent with the corresponding provisions of the proposed rule for shipyard employment.

On April 10, 1990, the Agency proposed to add criteria for personal fall arrest equipment (§§ 1910.128, 1910.129 and 1910.131) and positioning device equipment (§§ 1910.128 and 1910.130) to the general industry PPE standards (part 1910, subpart I, Docket S–057) (55 FR 13423). Again, the criteria proposed for general industry PPE were consistent with those proposed for shipyards.

The two general industry rulemakings generated extensive records, including hundreds of comments and several thousand pages of hearing testimony. On April 6, 1994, OSHA issued a final rule (59 FR 16334) which completed Agency action in the Docket S–060 proceeding. Based on the rulemaking record, OSHA made some changes to the proposed rule in drafting the final rule. In particular, OSHA revised the proposed training requirement so that it provides clear direction regarding what constitutes adequate training and what circumstances trigger a requirement for retraining. In addition, the final rule added requirements for the certification of the hazard assessment (§ 1910.132(d)(2)) and certification that the required training has been provided and understood (§ 1910.132(f)(4)).

Also, based on the rulemaking record for general industry fall protection PPE (Docket S–057), the Agency is considering further limiting or prohibiting the use of body belts and non-locking snaphooks in personal fall arrest systems. In particular, the evidence in the record supports the conclusion that an employee who falls while wearing a body belt as part of a personal fall arrest system is substantially more likely to suffer death or serious injury than would be the case if the employee were wearing a full body harness. Furthermore, the rulemaking record indicates that locking snaphooks designed to prevent "roll out" (where snaphooks become accidentally disengaged during use) provide a higher level of employee protection than single-action (non-locking) snaphooks.

While it is appropriate to facilitate employer access to safety and health standards by maintaining separate standards for general industry (part 1910) and for the shipyard industry (part 1915), the Agency believes that the substance of those standards should be consistent. OSHA believes, based on its review of the pertinent rulemaking records, that PPE used in shipyards does not differ markedly from PPE used in general industry. Therefore, the Agency has determined that the information generated in the general industry rulemakings should be taken into account as the Agency drafts the final rule for shipyard PPE, as well. To this end, OSHA is incorporating the general industry PPE rulemaking records (Dockets S–057 and S–060) into the record for the shipyards PPE rulemaking. In addition, OSHA is reopening the written comment period for the shipyard PPE proposal so the public has an opportunity to comment on the newly incorporated materials.

II. Issues

OSHA is requesting comments on these five specific issues:

1. *Certification of hazard assessment.* OSHA believes that a hazard assessment is an important element of a PPE program because it produces the information needed to select the appropriate PPE for the hazards present or likely to be present at particular workplaces. The Agency believes that employers are able to determine and evaluate the hazards of their particular workplaces and to use this information for proper PPE selection.

Proposed § 1915.152(b) required employers to select the types of PPE to be used by employees based on an assessment of the workplace hazards relative to PPE. The comments on proposed § 1910.132(d), which contained identical language, indicated concern about the level of documentation required for hazards assessment (Exs. 3:1 and 3:68). In regard to the general industry rulemaking, OSHA concluded that some form of record is needed to provide OSHA compliance officers and affected employees with appropriate assurance that the required hazard assessment has been performed. Given the performance-oriented nature of the rule, the Agency determined that the generation and review of extensive documentation would be unnecessarily burdensome.

OSHA has addressed such situations in other rulemakings (e.g., permit-required confined spaces, § 1910.146(g)(4); and the control of hazardous energy (lockout/tagout), 1910.147(c)(7)(iv) by requiring employers to verify their compliance with a requirement through a written certification. The Agency has found that a written certification is a reasonable means by which to establish accountability for compliance.

Therefore, OSHA determined that an employer could adequately verify compliance with the hazard assessment requirement through a written certification which identified the workplace evaluated; the person certifying that the hazard assessment

had been performed; the date(s) of the hazard assessment; and which identified the document as a certification of hazard assessment. Accordingly, the Agency added this requirement to the final rule as § 1910.132(d)(2).

OSHA believes that verification through written certification would also be appropriate with regard to hazard assessments to be performed under proposed § 1915.152(b). Therefore, OSHA solicits comments, with supporting information, as to the need for certification of the hazard assessment and the anticipated impact of such a requirement on the shipyard industry.

2. *Certification of training.* Proposed § 1915.152(e) required that employees be trained in the proper use of their PPE. Proposed § 1910.132(f) contained an identical requirement. Based on comments received in relation to proposed § 1910.132(f) (Exs. 3:41, 3:46, 3:49, 3:62 and 3:129) which expressed concern regarding the level of documentation employers would be required to provide for their training efforts, OSHA raised Issue 4 in the hearing notice (55 FR 3414, February 1, 1990) to elicit additional information on the recordkeeping needed to document compliance with the proposed paragraph. The commenters (Exs. 7:8, 7:19 and 7:39) generally supported some sort of certification for completion of training.

Based on the rulemaking record and the considerations raised above in regard to Reopening Issue 1, OSHA determined that employers could adequately verify compliance with proposed § 1910.132(f) through a written certification. Accordingly, the Agency revised proposed paragraph (f) to add paragraph (f)(4), which requires a certification record that identifies each employee trained, the date(s) of training, and which identifies the document as a certification of training in the use of PPE.

OSHA believes that verification through written certification would also be appropriate with regard to training to be provided under proposed § 1915.152(e). Therefore, OSHA solicits comments, with supporting information, as to the need for certification of employee training and the anticipated impact of such a requirement on the shipyard industry.

3. *Training elements.* As mentioned above, proposed § 1915.152(e) required that employees be trained in the proper use of their PPE, and proposed § 1910.132(f) set forth an identical requirement. Based on comments and testimony received in relation to proposed § 1910.132(f) (Exs. 3:36, 3:41, 3:50, 3:60, 3:73, 3:86, 3:88, 3:116, 3:128; 7:3, 7:8, 7:11, 7:20, 7:29, 7:38; Tr. 23:24; 4/3, Tr. 272–286; 4/4) which expressed concern that the proposed language did not provide enough detailed guidance regarding what constituted adequate training, OSHA determined that more specific guidance should be provided by the final requirement. Accordingly, the Agency determined that more specific guidance was appropriate and revised proposed § 1910.132(f) to require, at a minimum, training in the following areas:

- When PPE is necessary
- What PPE is necessary
- How to properly don, doff, adjust, and wear PPE
- The limitations of the PPE; and
- That proper care, maintenance, useful life and disposal of the PPE.

In addition, many of the above comments and testimony suggested that in order to have a successful training program, employers should set measurable training objectives and have their employees demonstrate that they have reached those objectives. Also, it was suggested that retraining be provided, when the employer determined that employees may not possess sufficient knowledge about the PPE. Accordingly, the following provisions were added to § 1910.132(f) in the final rule:

(2) Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(3) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations were:

(i) Changes in the workplace render previous training obsolete; or

(ii) Changes in the types of PPE to be used render previous training obsolete; or

(iii) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

OSHA believes that these more specific training requirements would also be appropriate with regard to training provided under § 1915.152(e). Therefore, OSHA solicits comments, with supporting information, as to the need for such requirements and the anticipated impact of those requirements on the shipyard industry.

4. *Body belts and harnesses in fall arrest systems.* Proposed § 1910.129(b) provided the system performance criteria for personal fall arrest systems. In particular, the proposed paragraph limited maximum arresting force on an employee to 900 pounds (4 kN) when using a body belt and 1,800 pounds (8 kN) when using a body harness. The corresponding provision for shipyard employment, proposed § 1915.159(a)(4)(iii), limited maximum arresting force for either belts or harnesses to the lesser of 10 times the employee's weight, or 1,800 pounds (8 kN). The more protective criteria in proposed § 1910.129(b) are based on information obtained after the Shipyard PPE proposal was issued (53 FR 48150, Nov. 29, 1988). This information is discussed in the General Industry PPE proposal (55 FR 13423, April 10, 1990).

Comments and testimony received on proposed § 1910.129(b) (Exs. 3:22, 3:31; Tr. 240–241 and 1374) indicate that the Agency needs to reconsider allowing the use of body belts in fall arrest systems. OSHA solicits comments, with supporting information regarding whether or not body belts should be permitted for use in fall arrest systems, and the anticipated impact on the shipyard industry of any requirement which might limit or prohibit their use.

5. *Locking and non-locking snap hooks.* Proposed § 1915.159 (a)(15), (a)(16), and (a)(17) prohibited certain snap hook connections (such as, connecting snap hooks to each other) where snap hooks have been known to accidentally disengage, allowing an employee to fall. Proposed § 1910.129(c)(1) required that snap hooks, unless of the locking type, and designed for certain connections (such as to each other, to horizontal lifelines, or to incompatibly shaped objects), not be used for these connections.

Comments and testimony received on the general industry provisions (Exs. 3:9, 3:12, 3:19; Tr. 210) has led the Agency to consider a prohibition on the use of non-locking snap hooks in personal fall protection systems.

OSHA solicits comments, with supporting information, regarding whether or not non-locking snap hooks should be permitted for use in personal fall protection systems or in positioning device systems, and the anticipated impact on the shipyard industry of any requirement which might further limit or prohibit their use.

III. Public Participation

Written comments regarding the materials incorporated into the shipyard

PPE record through this notice must be postmarked by August 22, 1994.

Four copies of these comments must be submitted to the Docket Office, Docket S–045A, U.S. Department of Labor, room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

IV. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), section 41 of the LHWCA (33 U.S.C. 941) and 29 CFR part 1911.

Signed at Washington, DC, this 29th day of June 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–16240 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–26–M

Notices

Federal Register
Vol. 59, No. 128
Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1994–June 30, 1995

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1994–June 30, 1995.

As provided for under the NSLA and the Child Nutrition Act of 1966, all rates in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 8, 1993 at 58 FR 36636 (for the period July 1, 1993–June 30, 1994). The payment rates for the period July 1, 1994–June 30, 1995 are:

All States Except Alaska and Hawaii

Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.1925
Free	.9750
Reduced	.6750
Lunches and Suppers: [1]	
Paid	$.1700
Free	1.7575
Reduced	1.3575

All States Except Alaska and Hawaii—Continued

Supplements:	
Paid	$.0450
Free	.4825
Reduced	.2400
Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	$.8275
Lunches and Suppers	1.5050
Supplements	.4475
Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	$.8275
Lunches and Suppers	1.5050
Supplements	.4475
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$69
Next 150 day care homes	53
Next 800 day care homes	41
Additional day care homes	36

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

ALASKA

Alaska—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.2750
Free	1.5450
Reduced	1.2450
Lunches and Suppers: [1]	
Paid	$.2725
Free	2.8450
Reduced	2.4450
Supplements:	
Paid	$.0725
Free	.7800
Reduced	.3900
Alaska—Meals Served in DAY CARE HOMES—Per Meal Rates in *Dollars or Fractions thereof:*	
Breakfasts	$1.3025
Lunches and Suppers	2.4375
Supplements	.7275

ALASKA—Continued

Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/ Per Month Rates *in Dollars:*	
Initial 50 day care homes	$112
Next 150 day care homes	85
Next 800 day care homes	67
Additional day care homes	59

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The new payment rates for Hawaii are as follows:

HAWAII

Hawaii—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.2150
Free	1.1325
Reduced	.8325
Lunches and Suppers: [1]	
Paid	$.1975
Free	2.0550
Reduced	1.6550
Supplements:	
Paid	.0525
Free	.5650
Reduced	.2825
Hawaii—Meals Served in DAY CARE HOMES—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	$.9575
Lunches and Suppers	1.7600
Supplements	.5250
Hawaii— ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/ Per Month Rates *in Dollars:*	
Initial 50 day care homes	$81
Next 150 day care homes	61
Next 800 day care homes	48
Additional day care homes	42

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 1.7 percent increase during the 12-month period May 1993 to May 1994 (from 142.9 in May 1993 to 145.3 in May 1994) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.3 percent increase during the 12-month period May 1993 to May 1994 (from 144.2 in May 1993 to 147.5 in May 1994) in the series for all items of the Consumers Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sec. 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended (42 U.S.C. 1753, 1759(a), 1766) and sec. 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773b).

Dated: June 29, 1994.

William Ludwig,

Administrator.

[FR Doc. 94–16294 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–M

Food Distribution Program; Value of Donated Foods from July 1, 1994 to June 30, 1995

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof to be provided in the 1995 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

This notice also announces that the value of agricultural commodities and other foods provided to States during the past school year met the level of assistance authorized under the National School Lunch Act. Thus, there will be no shortfall cash payments to States for the NSLP for the 1994 school year. The annually programmed level of assistance was met in food donations by June 30, 1994.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 1994 Through June 30, 1995

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h)(1) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)(1)). Section 6(e)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(e)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h)(1) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 14.50 cents for the period July 1, 1994 through June 30, 1995.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is assigned a proportional value using the appropriate relative weight as determined by the Bureau of Labor Statistics. The value of food

assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three-month average of the Price Index increased by 2.92 percent from 123.23 for March, April and May of 1993 to 126.83 for the same three months in 1994. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1994 through June 30, 1995 will be 14.50 cents per meal. This is an increase of 0.50 cents from the school year 1994 rate.

Section 14(f) of the Act provides that commodity schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to the use of such foods.

Commodity schools are defined in section 12(d)(7) of the Act (42 U.S.C. 1760(d)(7)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 1995 school year, commodity schools shall be eligible to receive donated food assistance valued at 31.50 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1995. The section 4 factor for commodity schools does not include the two cents per lunch increase for schools where 60 percent of the lunches were served in the second preceding year free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

Cash in Lieu Payments—Value of Donated Commodities for School Year 1994

Section 6(b) of the Act (42 U.S.C. 1755(b)) and the regulations governing cash in lieu of donated foods (7 CFR part 240) require the Secretary of Agriculture by June 1 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR part 250), these foods are used by schools participating in NSLP. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required by July 1 of that school year to pay to each State educational agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

During the past school year the adjusted minimum national average value of donated foods or payments of cash in lieu thereof per lunch was 14.00 cents. In accordance with section 6(e) of the Act, the mandated level of commodity assistance was $566,188,578 for school year 1994. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1994 to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1994.

Authority: Sections 6(e)(1) (A) and (B), 14(f) and 17(h)(1) of the National School Lunch Act, as amended (42 U.S.C. 1755(e)(1)(A) and (B), 1762a(f), and 1766(h)(1)).

Dated: June 29, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–16295 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–U

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 1994 through June 30, 1995.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FN, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.).

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

This Notice has been determined to be exempt under Executive Order 12866.

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products (Code 0231), published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1994 to June 30, 1995, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 11.00 cents. This reflects no change over the current reimbursement rate because the Producer Price Index for Fluid Milk Products (Code 0231) from May 1993 to May 1994 (from a level of 120.6 in May 1993 to 121.1 in May 1994) did not change significantly enough to trigger a change in the reimbursement rate.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1994 through June 30, 1995 reflect a 1.7 percent increase in the Price Index during the 12-month period May 1993 to May 1994 (from a level of 142.9 in May 1993 to 145.3 in May 1994).

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price lunches. The section 11 National Average Payment Factor for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 establishes National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1995. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced-price lunches in School Year 1992–93, the payments are:

Contiguous States—17 cents, maximum rate 25.00 cents; *Alaska*—27.25 cents, maximum rate 39.25; *Hawaii*—19.75 cents, maximum rate 29.00 cents.

In school food authorities which served *60 percent or more* free and reduced-price lunches in School Year 1992–93, payments are:

Contiguous States—19.00 cents, maximum rate 25.00 cents; *Alaska*—29.25 cents, maximum rate 39.25 cents; *Hawaii*—21.75 cents, maximum rate 29.00 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—158.75 cents, reduced-price lunch 118.75 cents; *Alaska*—free lunch 257.25 cents, reduced-price lunch 217.25 cents; *Hawaii*—free lunch 185.75 cents, reduced-price lunch 145.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are:

Contiguous States—free breakfast 97.50 cents, reduced-price breakfast 67.50 cents, paid breakfast 19.25 cents; *Alaska*—free breakfast 154.50 cents, reduced-price breakfast 124.50 cents, paid breakfast 27.50 cents; *Hawaii*—free breakfast 113.15 cents, reduced-price breakfast 83.25 cents, paid breakfast 21.50 cents.

For schools in "severe need" the payments are:

Contiguous States—free breakfast 116.00 cents, reduced-price breakfast 86.00 cents, paid breakfast 19.25 cents; *Alaska*—free breakfast 184.25 cents, reduced-price breakfast 154.25 cents, paid breakfast 27.50 cents; *Hawaii*—free breakfast 134.75 cents, reduced-price breakfast 104.75 cents, paid breakfast 21.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in Dollars or Fractions Thereof—Effective from July 1, 1994–June 30, 1995]

National school lunch program*	Less than 60%	60% or more	Maximum rate
Contiguous States:			
Paid	.1700	.1900	.2500
Reduced Price	1.3575	1.3775	1.5275
Free	1.7575	1.7775	1.9275
Alaska:			
Paid	.2725	.2925	.3925

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES—Continued

[Expressed in Dollars or Fractions Thereof—Effective from July 1, 1994–June 30, 1995]

National school lunch program*^	Less than 60%	60% or more	Maximum rate
Reduced Price	2.4450	2.4650	2.7100
Free	2.8450	2.8650	3.1100
Hawaii:			
Paid	.1975	.2175	.2900
Reduced Price	1.6550	1.6750	1.8525
Free	2.0550	2.0750	2.2525

School breakfast program:	Non-severe need	Severe need
Contiguous States:		
Paid	.1925	.1925
Reduced Price	.6750	.8600
Free	.9750	1.1600
Alaska:		
Paid	.2750	.2750
Reduced Price	1.2450	1.5425
Free	1.5450	1.8425

Special milk program	All milk	Paid milk	Free milk
Pricing Programs Without Free Option	$.11	N/A	N/A
Pricing Programs with Free Option	N/A	$.11	Average cost ½ pint milk.
Nonpricing Programs	$.11	N/A	N/A

*Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds. Lunch rates *do not* include the current *entitlement* commodity (or cash-in-lieu) value of an *additional* $.145 per meal.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: June 29, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–16293 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Boulder Tony Timber Sale and Other Projects, Siuslaw National Forest, Tillamook County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On July 24, 1991 a notice of intent to prepare an environmental impact statement (EIS) for the Boulder tony Timber Sale and Other Projects on the Siuslaw National Forest was published in the **Federal Register** (56 FR 33903). Because of new direction in the President's Forest Plan, the proposed project is no longer consistent with Forest management objectives. The Forest Service has decided to terminate the environmental analysis for this EIS. There will be no draft or final EIS for the Boulder Tony timber sale and other projects.

FOR FURTHER INFORMATION CONTACT: Bill Pigott, Supervisory Natural Resource Planner, Hebo Ranger District, P.O. Box 324, Hebo, Oregon 97122 or telephone (503) 392–3161.

Dated: June 27, 1994.

Linda D. Goodman,

Acting Forest Supervisor.

[FR Doc. 94–16272 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

West Fork Bayou L'Ours Watershed Supplement #2, Lafourche Parish, Louisiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Fork Bayou L'Ours Watershed Supplement #2, Lafourche Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are reduced interior marsh losses and shoreline erosion. The planned works of improvement include eight fixed crest weirs with boat bays, three canal plugs with flapgated culverts, seven canal plugs, four earthen overflow banks (a total of 30,730 feet), and two rock overflow banks (a total of 5,338 feet).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting: Faye A. Talbot, 3470 NE Evangeline Thruway, Lafayette, Louisiana 70507–2554.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 94–16251 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92–A0014.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to American Pork Export Trading Company ("APEX"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Summary of the Application

Applicant: American Pork Export Trading Company ("APEX"), P.O. Box 10383, Des Moines, Iowa 50306.

Contact: Laurence J. Lasoff, Telephone: (202) 342–8400.

DESCRIPTION OF AMENDED CERTIFICATE: Apex's export trade Certificate of Review has been amended to include the following change:

Each of the following companies has been added to the Certificate as a "Member" within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(a)): Sioux-Prime Packing Company, Sioux Center, Iowa; Excel Corporation, Wichita, Kansas; Smithfield Food, Inc., Smithfield, Virginia; and American Food Group, Inc., Minneapolis, Minnesota.

Pursuant to Section 304(a)(2) of the ETC Act, 15 USC Section 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from March 17, 1994, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 30, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–16265 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 062094C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit No. 836 (P79F)

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 836 submitted by the Institute of Marine Studies, University of California, Santa Cruz, CA 95064 (Principal Investigators: Drs. Daniel Costa, Burney J. Le Boeuf, and Charles L. Ortiz) has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389);

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4016 (310/980–4020.

SUPPLEMENTARY INFORMATION: On May 11, 1994, notice was published in the **Federal Register** (59 FR 24405) that a modification of Permit No. 836, issued May 12, 1993 (57 FR 29199) had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The modification authorizes: Translocation of seals up to 200 km from the Año Nuevo (40 of which may be released to a location 5 miles south of Sur Ridge or south of Pt. Sur, site of the proposed ATOC sound source); attachment of an acoustic data logger (sound recorder); killer whale sounds played in the track of homing seals; and capture of seals from Gorda and Piedras Blancas in Central California.

Dated: June 29, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–16271 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062494A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit no. 918 (P191E).

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 918 submitted by California Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389); and

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213.

SUPPLEMENTARY INFORMATION: On May 27, 1994, notice was published in the **Federal Register** (59 FR 27535) that a modification of Permit No. 918, issued May 20, 1994 (59 FR 27535), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking,

importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 918 authorized inadvertent harassment of harbor seals, and the incidental harassment of California sea lions, Northern elephant seals (*Mirounga angustirostris*), Northern fur seals (*Callorhinus ursinus*) during harbor seal surveys. The modification authorizes inadvertent harassment of harbor seals during scat collections and Steller sea lions (*Eumetopias jubatus*) and Guadalupe fur seals (*Arctocephalus townsendi*) during aerial surveys to collect data on abundance and distribution of these species along the California coast and the Channel Islands.

Issuance of this modification, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: June 29, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–16270 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 27 July 1994 at 10:00 AM in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the Government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call and above number.

Dated in Washington, DC, 27 June 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–16250 Filed 7–5–94; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms, and OMB Control Number: Industrial Base Program Production Capacity, Crisis Production, and Industrial Facility Survey; DD Forms 2575, 2575–1, and 2575–2; OMB Control Number 0704–0037.

Type of Request: Revision.

Number of Respondents: 20,000.

Responses Per Respondent: 5.

Annual Responses: 10,000.

Average Burden Per Response: 2.5 hours.

Annual Burden Hours: 25,000.

Needs and Uses: The information collected hereby, will be used to analyze and assess the defense industrial base, as required by Public Law 100–456, "The National Defense Authorization Act, Fiscal Year 1989," It will be used to establish a basic understanding of the industrial capacity for defense items, as well as to acquire the data necessary to develop planned producer production commitments.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommends on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16237 Filed 7–5–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

DOD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, July 20, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No.92–463, as amended, (5 U.S.C. App. II Section 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16236 Filed 7–5–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Patent Licenses; Non-Exclusive, Exclusive, or Partially Exclusive:

AGENCY: Department of the Navy, DOD.

ACTION: Intent to Grant Co-Exclusive Patent Licenses; Martin Marietta Corporation and Quantum Design, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Martin Marietta Corporation and Quantum Design, Inc., revocable, nonassignable, co-exclusive licenses in the United States and in certain foreign countries to practice the Government-owned inventions described in U.S. Patent No. 5,206,592 entitled "Detection of Explosives by Nuclear Quadrupole Resonance, issued April 27, 1993 to Michael L. Buess, Allen N. Garroway and Joel B. Miller, United States Patent No. 5,233,300 entitled "Detection of Explosive and Narcotics by Low Power Large Sample Volume Nuclear Quadrupole Resonance (NQR)" issued August 3, 1993 to Michael L. Buess, Allen N. Garroway and Joel B. Miller and U.S. Patent Application Serial No. 07/983,990 entitled "Removing the Effects of Acoustical Ringing and Reducing Temperature Effects in the Detection of Explosives by NQR" filed November 30, 1992.

Anyone wishing to object to the grant of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 29, 1994.

Lewis T. Booker Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–16261 Filed 7–5–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

Centers for Independent Living; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973 (Act), as amended, consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants

An applicant is eligible to apply as a new center if the applicant meets the requirements of §§ 366.2(a) and 366.24 and either— (1) Is not currently receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) proposes the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to those entities proposing to serve areas that are unserved or underserved in the States and territories listed under AVAILABLE FUNDS.

Deadline for Transmittal of Applications: August 5, 1994.

Deadline for Intergovernmental Review: September 6, 1994.

Applications Available: July 6, 1994.

Available Funds: $2,776,432 as distributed in the following—

American Samoa	$154,046
Arkansas	80,107
Arizona	80,107
Delaware	32,531
D.C	64,720
Florida	247,814
Georgia	227,776
Guam	44,641
Hawaii	51,546
Indiana	54,588
Iowa	58,755
Louisiana	80,107
Maryland	80,107
Nevada	80,107
New Hampshire	80,107
New Jersey	284,293
North Carolina	227,885
North Dakota	80,107
Ohio	378,894
Puerto Rico	80,107
South Carolina	80,107
South Dakota	80,107
Washington	56,892
Wyoming	80,107

Estimated Range of Awards: $32,000 to $200,000.

Estimated Number of Awards: 1 to 5 per eligible State or territory.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

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 program regulations in 34 CFR Parts 364 and 366.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) published in the **Federal Register** on May 12, 1994 (59 FR 24814), because the Department's authority to obligate these funds will expire on September 30, 1994.

The comment period for the NPRM ended on June 13, 1994. A total of 40 comments were received from centers (21), State agencies (11), Statewide Independent Living Councils and other statewide organizations (4), national constituent organizations (3), and an individual (1). The comments were generally favorable and constructive. The following is a summary of the substantive comments received on the NPRM and of the changes that are expected to be made, based on public comments, in the final regulations that are currently undergoing review and that may affect applicants under this competition. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Only one commenter objected to the 30-day comment period. The Secretary considered a 30-day comment period necessary because a longer comment period would not have left enough time to publish this notice inviting applications for competitive awards for new centers under this program for fiscal year (FY) 1995. The Secretary also considered a 30-day comment period adequate because of the extensive opportunity for input and comment that was afforded to the public prior to publishing the NPRM. The Secretary does not believe it is necessary to extend the comment period.

Part 364

Two commenters objected to the change in terminology from an individual with "severe" disabilities to an individual with "significant" disabilities. Although only one comment specifically complimenting the Department on the use of "significant" rather than "severe" was received in response to the NPRM, the IL community previously expressed overwhelming support for the change in comments to the notice of proposed rulemaking on the proposed nomenclature change published on October 27, 1993 (58 FR 57938). Therefore, the Secretary does not expect any change in the final regulations.

A number of commenters suggested changes to the definitions in proposed § 364.4.

Two commenters were concerned that the proposed definition of "advocacy" may be interpreted to require an advocate to be an attorney. One of these commenters suggested a broader definition of "advocacy."

The proposed definition of "advocacy" specifically states that, to the extent permitted by State law or the rules of any agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. The Secretary does not interpret this definition as requiring an advocate to be an attorney in all cases, but only in those situations where State law or the rules of an agency require that an advocate representing another individual be an attorney.

Therefore, the Secretary does not expect any change to this definition in the final regulations.

Commenters suggested that the proposed definition of "attendant care" be revised to make it clear that this service may be provided on the job and in the community, as well as at home.

The Secretary believes the proposed definition provides adequate flexibility to allow attendant care in a variety of situations. Therefore, the Secretary does not expect any change to this definition in the final regulations.

Commenters questioned why the words "cognitive" and "sensory" do not appear in the proposed definition of "individual with significant disabilities." These commenters noted that the proposed definition conflicts with the proposed definition of an "individual with a disability."

The concepts of "physical" and "mental" impairments in the statutory definitions of "individual with a severe disability" and "individual with a disability" include the concepts of "sensory" and "cognitive" impairments, respectively. However, the Secretary agrees that the definitions of "individual with a significant disability" and "individual with a disability" should be consistent. Therefore, the Secretary anticipates adding the words "sensory" and "cognitive" to the definition of "individual with a significant disability" in the final regulations.

In proposed § 364.5, commenters objected to the limitation on reallocating expenditures after the initiation of an audit or compliance review and considered it punitive and contrary to ordinary accounting procedures.

The Secretary agrees that a change is necessary to make this requirement consistent with acceptable accounting practices. Therefore, the Secretary anticipates changing § 364.5 in the final regulations to allow costs that a grantee intends to use as an offset against disallowed costs, if those costs are reported on the final financial status reports within 90 days after the completion of an audit or compliance review.

Commenters objected to the language in proposed §§ 364.6 and 364.7 regarding program income. Commenters asserted that the resource development requirement in evaluation standard 7 in section 725(b)(7) of the Act should be interpreted to permit centers to accumulate funds over several years to create, among other financial instruments, endowments and reserves.

The Secretary agrees that imposing time limits on the use of program income may be inconsistent with long-term "resource development," which may include endowment drives and the solicitation of gifts and bequests that may produce long-term income. Therefore, the Secretary anticipates changing the language in proposed §§ 364.6 and 364.7 in the final regulations to allow centers to use program income to establish endowments and other similar financial instruments, but only if the corpus and income generated from the endowment and other similar financial instruments are used solely to carry out the purposes of the Center for Independent Living (CIL) program authorized under Part C of Chapter 1 of Title VII of the Act.

One commenter objected to the use of the term "special" when referring to reasonable accommodation and "alternative" modes of communication in proposed §§ 364.20, 364.23, and 364.56.

The Secretary agrees with the commenter and anticipates substituting the word "alternative" for the word "special" in these sections of the final regulations.

Commenters expressed concern regarding access to records in proposed § 364.37(c) on the grounds that access to individual records may be unnecessarily intrusive and inconsistent with commitments that providers make to their consumers.

The Secretary believes that access to individual case records or files or consumer service records is necessary for the proper and efficient administration and monitoring of the CIL program. Proposed § 364.37(c) limits this access to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives. The Secretary does not believe that this access is unreasonable or that it will be abused. Therefore, the Secretary does not expect any change in the final regulations.

Commenters were concerned that the references to "legally authorized representative" in proposed § 364.51 may be interpreted to require an attorney or legal guardian.

The Secretary does not intend to require that only an attorney or legal guardian may represent an individual for purposes of proposed § 364.51(b)(2)(requirements pertaining to ineligibility determinations). Therefore, the Secretary anticipates adding a definition of "legally authorized representative" to the final regulations to clarify that an individual's authority to represent or advocate on behalf of an individual with significant disabilities is determined pursuant to State law.

Two commenters objected to the absence of requirements in proposed § 364.52 regarding the content of a waiver and the appropriate solicitation of a waiver. One of the commenters also was concerned that the absence of conditions on the use of waivers could allow service providers to circumvent the requirements of proposed §§ 364.43 (provision of IL services by the State) and 364.53 (documentation of IL services provided to individuals). One of the commenters also suggested that the regulations should require that consumers be advised of the need for an IL plan and how the IL plan helps protect the consumer's rights.

The Secretary agrees in part with the commenters and anticipates adding the words "knowingly and voluntarily" before the word "signs" in § 364.52(a)(2) of the final regulations. The Secretary believes this is adequate protection to prevent the possibility of service providers forcing consumers to sign "waivers." The Secretary does not believe that it is necessary to add further requirements regarding the waiver of an IL plan.

Commenters suggested that proposed § 364.53 be modified to recognize the fact that records may be electronic as well as written.

The Secretary agrees with the commenters. With the exception of an IL plan or a waiver of an IL plan, both of which require a consumer's signature, the Secretary anticipates revising § 364.53 in the final regulations to allow records to be maintained electronically.

Commenters suggested that the State standards in proposed § 364.55 should not be permitted to exceed the standards in section 725 of the Act.

The standards referred to in proposed § 364.55 are actually the standards that the designated State unit (DSU) is required to develop pursuant to proposed § 365.31 for those service providers that are not centers or for

centers that are providing specialized IL services under a contract with the DSU. The Secretary anticipates adding language to the final regulations to make this clear.

One commenter objected to the words "other information" in proposed § 364.56(c)(2) because of the possibility that service providers may use this language to withhold information from a consumer.

Proposed § 364.56(c)(2) does not permit a service provider to withhold information from a consumer. Proposed § 364.56(c)(2) merely requires that, if a service provider determines that releasing medical, psychological, or other information may be harmful if released directly to the consumer, the service provider shall release this information to the consumer through a qualified medical or psychological professional or the individual's legally authorized representative. The Secretary does not expect any change to § 364.56(c)(2) in the final regulations.

Part 366

One commenter suggested adding a requirement to the selection criteria in proposed § 366.27 that the governing board be reflective of the localities to be served by the proposed center.

The Secretary believes that, rather than adding the suggested language to the selection criteria in proposed § 366.27, replacing the words "another" and "other" in proposed § 366.28(a) with "bordering" and adding similar language in §§ 366.2(a)(1)(i), 366.28(a), and 366.29(a) of the final regulations is more appropriate. In this manner, centers will be limited to operating within a "local community," as required by section 702(1)(A) of the Act.

One commenter considered the selection criterion in proposed § 366.27(a)(2) too vague and suggested that it be expanded to "not appear to be the traditional 'needs assessment' that creates more service providers."

The Secretary believes that the criterion adequately explains how an applicant can be expected to identify the need for a new center in a community and how the applicant plans to address this identified need. The Secretary does not expect any change in the final regulations.

Commenters suggested reducing the points allotted to "plan of operation" and increasing points for "involvement of individuals with significant disabilities" in the selection criteria in proposed § 366.27(g) and (h), respectively. Commenters also felt that the proposed selection criteria should include the involvement of individuals with significant disabilities in the preparation of a center's application.

The Secretary believes that the points assigned to the "plan of operation" selection criterion appropriately reflect its value. The Secretary agrees that participation of individuals with significant disabilities in the preparation of applications is important and anticipates substituting the phrase "developing the center's application" for the phrase "conducting center activities" in § 366.27(h)(1) of the final regulations.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the selection criteria in § 366.27 of the notice of proposed rulemaking published in the **Federal Register** on May 12, 1994 (59 FR 24814, 24838–24839), with the anticipated changes discussed in this notice.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

FOR APPLICATIONS: Telephone (202) 205–9315. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals may write to receive an application from Donald Thayer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3326 Switzer Building, Washington, DC 20202–2741.

FOR FURTHER INFORMATION CONTACT: Donald Thayer, telephone: (202) 205–9315, or John Nelson, telephone: (202) 205–9362 (Voice and TDD), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3326 Switzer Building, Washington, DC 20202–2741.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 94–16288 Filed 7–5–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.177A]

Independent Living Services for Older Individuals Who Are Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program supports projects that—(1) provide independent living services to older individuals who are blind; (2) conduct activities that will improve or expand services for these individuals; and (3) conduct activities to help improve public understanding of the problems of these individuals. The Independent Living Services for Older Individuals Who Are Blind program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Any designated State agency (DSA) that is authorized to provide rehabilitation services to individuals who are blind is eligible for an award under this program.

Deadline for Transmittal of Applications: August 5, 1994

Deadline for Intergovernmental Review: September 6, 1994

Applications Available: July 6, 1994

Available Funds: $7,449,000.

Estimated Range of Awards: $130,000–180,000.

Estimated Average Size of Award: $158,000.

Estimated Number of Awards: 47.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 367.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking, published in the **Federal Register** on May 12, 1994 (59 FR 24814), because the Department's authority to obligate these funds will expire on September 30, 1994.

The comment period for the notice of proposed rulemaking ended on June 13, 1994. Six parties submitted comments on proposed 34 CFR Part 367. The following is a summary of the comments received and of the changes that are expected to be made, based on public comments, in the final regulations that are currently undergoing review.

Three commenters supported the proposed regulations as worded.

One commenter recommended adding the word "may" to proposed § 367.3(b). (Although the commenter identified the provision as § 367.1(b), the comment makes sense only if applied to proposed § 367.3(b).) The commenter stated that the addition of the word "may" would give States flexibility in the event they have funds to cover other services.

Proposed § 367.3(a) states that a DSA "may" use funds awarded under proposed Part 367 for the activities described in proposed §§ 367.1 and in 367.3(b). The Secretary believes that this language already provides a DSA with adequate flexibility in choosing which services will be provided to individuals in the State. Therefore, no change to proposed § 367.3(b) is expected in the final regulations.

One commenter suggested changing the definition of "older individual who is blind" in proposed § 367.5 to make it less restrictive. Because this term is specifically defined in section 751 of the Act, no change to this definition in proposed § 367.5 is expected in the final regulations.

One commenter recommended adding a definition of "capacity building" to proposed § 367.5. The Secretary does not believe a definition is necessary because a variety of possible opportunities already exists for local, regional, and State "capacity building."

One commenter suggested that the list of services in proposed § 367.22(g) should be the same as that provided in proposed § 367.3(b) and also suggested adding the word "may" to § 367.22(g)(2). The commenter also stated that the wording in proposed § 367.22(g) could be construed to mean that grant funds have to be used for all the listed services and that States should not have to duplicate services already provided by the State through other sources.

The Secretary agrees that the list of services in these proposed provisions should be the same. The Secretary expects that this change will be made to proposed §§ 367.3(b) and 367.22(g)(2) in the final regulations. The Secretary also agrees that Chapter 2 funds should be used in a way that will supplement services that may already be available through other sources. The Secretary expects that proposed § 367.22(g)(2) of the final regulations will be changed to make clear that an application will be evaluated on the extent to which the DSA will use Chapter 2 funds to meet the unmet independent living (IL) needs of individuals in the State.

One commenter recommended including older individuals who are blind in the selection of new methods and approaches for the provision of IL services pursuant to proposed § 364.28.

The Secretary believes that the views of older individuals who are blind will be adequately represented and addressed by the Statewide Independent Living Council (SILC). The SILC and DSU have joint responsibility for development of the State plan and for ensuring that consumers have the opportunity to comment on the development and revision of the State plan during public hearings. The selection and incorporation into the State plan of any new approaches for the provision of IL services to older individuals who are blind would require a revision to the State plan. Therefore, the Secretary does not expect any changes in the final regulations.

Two commenters recommended deleting proposed § 367.41(b), which restricts a DSA's flexibility to enter into procurement contracts with public and private nonprofit agencies.

Although section 752(i)(2)(A) of the Rehabilitation Act of 1973 (Act), as amended, 29 U.S.C. 701–796i, is a general provision that allows the DSA to operate or administer this program either directly or through grants or contracts, section 752(g) of the Act requires that a State's awards to public and private nonprofit agencies and organizations under this program be made only through grants. Therefore, no change to proposed § 367.41(b) is expected in the final regulations.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

FOR APPLICATIONS OR INFORMATION CONTACT: Raymond Melhoff, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3416 Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–9320. Individuals who use a telecommunications device for the deaf (TTD) may call (202) 205–9362.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 796f.

Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 94–16287 Filed 7–5–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No: 84.265]

State Vocational Rehabilitation Unit In-Service Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed (a) to address recruitment and retention of qualified rehabilitation professionals; (b) to provide for succession planning; (c) to provide for leadership development and capacity building; and (d) for fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

Eligible Applicants: Only State agencies designated under a State plan for vocational rehabilitation services under section 101(a) of the Rehabilitation Act of 1973, as amended, are eligible to receive an award under this program.

Deadline for Transmittal of Applications: August 8, 1994

Deadline for Intergovernmental Review: September 7, 1994

Applications Available: July 7, 1994

Available Funds: $5,944,350, of which $4,755,480 is available for

allocation to designated agencies for basic awards and $1,188,870 is available for allocation to high quality applications. (Specific information regarding funds available to be allocated to designated State agencies for basic awards appears in the chart in this notice.)

Estimated Range of Awards: $19,795—$300,680.

Estimated Average Size of Awards: $73,387.

Estimated Number of Awards: 81.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR Part 388; and (c) §§ 385.4 and 385.40 through 385.46 of 34 CFR Part 385.

Priorities

Under 34 CFR 75.105(c)(3) and proposed § 385.22(a) the Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in proposed § 388.20. In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following absolute priorities:

(1) Development and Dissemination of Model In-Service Training Materials and Practices

The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) Distance Education

The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) Enhanced Employment Outcomes for Specific Populations

The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking, published in the **Federal Register** on May 9, 1994 (59 FR 24000), because the Department's authority to obligate these funds will expire on September 30, 1994.

The comment period for the notice of proposed rulemaking ended June 8, 1994. Sixteen parties submitted comments on the proposed regulations. The following is a summary of the changes that are expected to be made in the final regulations that are currently undergoing review, based on the public comment.

Five commenters suggested deleting § 388.21(a)(4), which provides a minimum share of not less than one-eighth of one percent of the amounts made available to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau. The commenters believe agencies in the territories, some of which have as many employees as small designated State agencies, should receive the same minimum share of not less than one-third of one percent of the amounts made available for the fiscal year as provided in § 388.21(a)(3) to small agencies. The Secretary agrees that the same minimum share provided to small designated State agencies is appropriate for the specified territories. The Secretary also notes that the territories are eligible to compete for the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the selection criteria in § 388.20 and the priorities in § 388.22. The Secretary expects to revise § 388.21(a) by deleting paragraph (4) so that all grant recipients receive the same minimum share of the sums made available for the fiscal year. A revision of § 388.30, deleting paragraph (c), which provides special matching considerations for the territories, is also expected to be made in the final regulations.

Two commenters requested definitions for the terms "succession planning" and "capacity building" used in § 388.1. The Secretary notes that these terms are found in the statute, but are optional for State agencies to address in their in-service training. There are alternative ways to address these terms, and the Secretary prefers not to define them, thus leaving the widest possible discretion to State agencies. No change is expected to be made in the final regulations.

Three commenters addressed the requirement in § 388.20(a)(2)(iii) for an annual needs assessment of in-service training needs. The commenters believe an annual assessment is not necessary and recommend a comprehensive needs assessment every three years and a less comprehensive review annually. The Secretary agrees that a comprehensive assessment is not needed annually. A revision of § 388.20(a)(2)(iii), deleting the word "annual," is expected to be made in the final regulations.

Three commenters noted that the regulations do not specify the length of projects. Recommendations of project periods of 36 and 60 months were made. The Secretary notes that regulations usually do not specify project duration and instead leave flexibility for the Secretary to determine an appropriate project period each time a competition is announced. This notice solicits applications for a 36-month period. No change is expected to be made in the final regulations.

A commenter asked that the phrase "in connection with a distance learning training course" be dropped from the description of allowable telecommunications and technology fees in § 388.31(d). The Secretary agrees that distance learning may include valuable in-service training activities, such as a lecture or technology demonstration, that are not part of a training course. The Secretary expects to revise § 388.31(d) by deleting the words "in connection with a distance learning training course."

A commenter noted that it was an unnecessary limitation to require that distance education for rehabilitation workers be at their job sites as stated in § 388.22(b)(2). The commenter noted that it may be necessary or efficient for an agency to gather a group of employees at a central location removed from individual offices for distance education. The Secretary agrees that there is no compelling reason to require in this priority that training occur at an individual job site. The Secretary expects to revise § 388.22(b)(2) by deleting the words "at their job sites."

A commenter requested clarification of the heading for § 388.22(b)(3), which refers to "specific populations" although the text that follows refers to "all individuals or specified groups." The Secretary believes that it is up to the State agency to determine whether in-service training to improve employment outcomes will be targeted narrowly or broadly. Activities directed

to improving employment outcomes for all population groups or for a specific target group are permitted under this priority. No change is expected to be made in the final regulations.

A commenter observed that the NPRM retains most of the language in the current regulations and does not accurately reflect the Rehabilitation Act Amendments of 1992 (the 1992 Amendments), particularly provisions related to State and strategic plans. The Secretary believes that extensive changes have been proposed in the current regulations and is confident that all requirements in the 1992 Amendments have been implemented. No change is expected to be made in the final regulations.

Two commenters supported reserving a portion of funds for priorities, but believe this reserve should be divided between priorities based on need and priorities based on responsiveness or quality of the application and innovative approaches. The Secretary believes that the three priorities listed in the proposed regulations address significant needs of State agencies and that no further division of the priorities into categories is needed. No change is expected to be made in the final regulations.

Four commenters objected to the proposed formula in § 388.21 whereby 80 percent of the funds available would be distributed based on the number of staff and 20 percent of the funds available would be distributed based on quality. They believe that the split penalizes States with small populations with limited capacity to write grants. In the commenters' view, the distribution does not take into account extra travel costs in a State with a large geographic area, and a commenter suggested increasing the small State agency minimum share. The Secretary believes that the proposed formula maximizes the amount of funds available for basic awards while ensuring that a reasonable amount is available for small agencies and for the Secretary's priorities. No change is expected to be made in the final regulations.

A commenter recommended dropping the priority in § 388.22(b)(2) for distance education on the grounds that there is no evidence that distance education produces better results at less cost. The Secretary believes that distance education is needed in some States and wants to ensure that a mechanism exists to demonstrate innovative approaches to learning. No change is expected to be made in the final regulations.

Two commenters recommended deleting § 388.20(f)(1)(ii) of the evaluation selection criteria that would judge in-service training outcomes by the extent to which training results in improved individual competency through licensure, certification, or award of academic degrees or certificates. The commenters believe in-service training to be short-term and job-based; therefore, reference to improved individual competency through degree-based programs should be dropped. The Secretary believes that, in response to the need to increase the number of qualified rehabilitation personnel, academic outcomes must be included among the measures of in-service training programs. No change is expected to be made in the final regulations.

Three commenters observed that reviewers for in-service proposals should be well qualified, represent diverse populations, and be identified by name and program affiliation after the review is completed. They commented that all applicants should receive reviewer comments. The Secretary agrees that reviewers must be qualified and representative of the diverse populations and agencies assisted through in-service training. The Secretary does make summary information available on characteristics of reviewers but believes the specific reviewers of proposals should remain anonymous. All applicants are provided with the reviewer comments on their applications when the review is completed. No change is expected to be made in the final regulations.

A commenter noted that § 388.21 does not state what the minimum score is that an applicant must receive in order for its application to be approved by the Secretary or how it is to be computed. In order to make funding decisions, the Secretary will set a minimum score for each competition after all applications have been reviewed. The minimum score will be computed through an analysis of all reviewed applications to determine those that are in the fundable range. No change is expected to be made in the final regulations.

A commenter observed that § 388.1 should be revised, and the regulations changed throughout, to emphasize human resource development in place of training. Peer reviewers should be oriented to human resource development prior to their service as reviewers. The Secretary agrees that the term human resource development is descriptive of many appropriate activities under this program. However, the Rehabilitation Act of 1973, as amended, uses the term "in-service training," so that term is used in the regulations. No change is expected to be made in the final regulations.

Regarding § 388.22, which sets the Secretary's priorities, a commenter asked if an application that addresses issues or activities other than the three priorities listed can be eligible for quality funds. The Secretary responds that only applications that respond to the priorities already identified by the Secretary in the regulations for this program or priorities established through future rulemaking will be considered when allocating the quality funds. No change is expected to be made in the final regulations.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

For Applications or Information Contact: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3324 Switzer Building, Washington, D.C. 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 770 and 771a.

Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21

State Agency	Amount
AL	$97,738
AK	19,795
AZ	70,830
AR	95,655
AR—Blind	19,795
CA	300,680
CO	39,929
CT	30,901
CT—Blind	19,795

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21—Continued

State Agency	Amount
DE	19,795
DE—Blind	19,795
FL	167,527
FL—Blind	38,713
GA	152,597
HI	19,795
ID	21,353
ID—Blind	19,795
IL	148,083
IN	65,275
IA	48,956
IA—Blind	19,795
KS	51,213
KT	81,246
KT—Blind	19,795
LA	85,760
ME	23,263
MD	88,855
MA	99,648
MA—Blind	20,138
MI	120,133
MI—Blind	19,795
MN	65,101
MN—Blind	19,795
MS	90,447
MO	57,115
MO—Blind	19,795
MT	19,795
NE	27,256
NE—BLIND	19,795
NV	19,795
NH	19,795
NJ	55,900
NJ—Blind	20,394
NM	29,339
NM—Blind	19,795
NY	161,624
NY—Blind	29,512
NC	162,840
NC—Blind	29,860
ND	19,795
OH	127,077
OK	71,177
OR	43,401
OR—Blind	19,795
PA	103,988
PA—Blind	19,795
RI	19,795
SC	153,291
SC—Blind	19,795
SD	19,795
SD—Blind	19,795
TN	80,899
TX	267,348
TX—Blind	81,593
UT	35,241
VT	19,795
VT—Blind	19,795
VA	82,461
VA—Blind	19,795
WA	55,206
WA—Blind	19,795
WV	103,988
WI	69,615
WY	19,795
District of Columbia	30,033
Puerto Rico	199,817
American Samoa	19,795
Northern Mariania Islands	19,795
Guam	19,795
Virgin Islands	19,795

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21—Continued

State Agency	Amount
Palau	19,795
	4,755,480

[FR Doc. 94–16286 Filed 7–5–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, July 6, 1994: 7:00 p.m.–10:00 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on environmental management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, July 6, 1994

7:00 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

10:00 p.m.
- Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details. A final agenda will be available at the meeting on Wednesday, July 6, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 2 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on June 30, 1994.

Marcia L. Morris,
Deputy Advisory Committee Management Officer.

[FR Doc. 94–16298 Filed 7–5–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act. (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).
Date and Time: Wednesday, July 27, 1994 at 8:30 AM.
Place: ANA Hotel, Grand Ballroom, 2401 M Street, NW., Washington, DC.
Contract: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5) Washington, D.C. 20585, Telephone: 202/586–3867.
Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Ray L. Hunt, Chairman of the NPC.
—Consider and approve the proposed report of the NPC Committee on the Oil Pollution Act.
—Consider and approve the proposed report of the NPC Committee on Marginal Wells.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 24, 1994.

Marcia Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–16297 Filed 7–5–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2724–008; Ohio]

City of Hamilton; Notice of Availability of Environmental Assessment

June 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the City of Hamilton Hydroelectric Project, No. 2724–008. The City of Hamilton Hydroelectric Project is located on the Miami River in Butler County, Ohio. The application is for approval to remove and replace the existing powerhouse superstructure and lowering the elevation of the powerhouse and generating unit. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16338 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

Project No. 2431–008; Michigan and Wisconsin

Wisconsion Electric Power Company; Notice of Availability of Draft Environmental Assessment

June 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the existing Brule Hydroelectric Project located on the Brule River in Iron County, Michigan and Florence County, Wisconsin, near Crystal Falls, Wisconsin, and has prepared a draft Environmental Assessment (DEA) for the existing project.

Copies of the EA are available for review in the Public Reference Branch, Room 3308 the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2431–008 to all comments. For further information, please contact Mark Pawlowski, Environmental Assessment Coordinator, at (202) 219–2795.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16339 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–266–000]

ANR Pipeline Company; Technical Conference

June 29, 1994.

In the Commission's order issued on June 29, 1994, in the above-captioned proceeding, the Commission held that the filing is to be consolidated with the ongoing proceedings and technical conference scheduled in Docket No. RP94–150–000. The previously scheduled technical conference in Docket No. RP94–150–000 will be held Thursday, July 7, 1994, at 1:30 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16341 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–000]

Koch Gateway Pipeline Company; Informal Settlement Conference

June 29, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on July 13, 1994, at 10 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208–0740 or Warren C. Wood at (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16340 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

National Defense Authorization Act Proposed Procedures—Central Valley Project, California

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Procedures to Implement Section 2929 of the 1994 National Defense Authorization Act (National Defense Authorization Act, Pub. L. No. 103–160, 107 Stat. 1547, 1935 (1993)).

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), has developed proposed procedures to fulfill the requirements of section 2929 of the National Defense Authorization Act for fiscal year 1994 (National Defense Authorization Act, Pub. L. No. 103–160, 107 Stat. 1547, 1935 (1993)) (NDA Act). Under the proposed

procedures to implement the requirements of the NDA Act, Western would allocate up to 119.223 megawatts (MW) of Power from the Central Valley Project (CVP), which represents the amount of CVP Power provided as of November 30, 1993, to military installations. The NDA Act was signed into public law on November 30, 1993. Section 2929 of the NDA Act provides that, for a 10-year period beginning on November 30, 1993, the electric power allocations provided as of November 30, 1993, by Western from the CVP to military installations in the State of California which have been closed or approved for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (part A, Title XXIX, Pub. L. 101–510; 10 U.S.C. 2687 note) (1990 Act) shall be reserved for sale through Long-Term Contracts to Preference Entities which agree to use such Power to promote economic development at a military installation that is closed or approved for closure pursuant to the 1990 Act. To the extent Power reserved by the NDA Act is not disposed of through Long-Term Contracts, it shall be made available on a temporary basis during such 10-year period to military installations in the State of California through Short-Term Contracts. By implementing these Procedures, Western will establish the criteria to allocate the Power made available as a result of the NDA Act.

The procedures set forth in this **Federal Register** will explain in detail how Western intends to implement the NDA Act. Under the proposed NDA Act Procedures, Western has identified the Power that will be classified as NDA Act Power and the types of services and contracts that will be offered. Also set forth under the proposed NDA Act Procedures are the general eligibility criteria that Western will apply to all applicants requesting an Allocation of NDA Act Power, and the procedures to be used by applicants when applying for NDA Act Power, which include demonstration that certain economic development criteria are being met. Lastly, Western has set forth the procedures that will be used in allocating NDA Act Power to eligible applicants, including a priority list developed by Western for allocating NDA Act Power. In general, the proposed Procedures provide that the allocation of CVP Power as of November 30, 1993, at a military installation that is closed or approved for closure under the 1990 Act will be classified as NDA Act Power and will be reserved through November 30, 2003, for use at that military installation. Until the NDA Act Power is fully utilized at that military installation, the NDA Act Power will be made available on a temporary basis as described in Section G.1. of the NDA Act Procedures.

NDA Act Power will be available to the following types of entities, in the following priority:

1. First for a military load at a Closed Military Installation that received CVP Power as of November 30, 1993, or to qualified preference entities promoting economic development at such closed military installation.

2. Second, on a recallable basis with 3 years' notice, to a qualified preference entity promoting economic development at a Closed Military Installation that did not have CVP Power as of November 30, 1993.

3. Third, on a recallable basis with 6 months' notice, to a military branch which had CVP Power at a Closed Military Installation as of November 30, 1993, for use within that military branch at a military installation within the CVP marketing area.

4. Fourth, on a recallable basis with 6 months' notice, to any military branch for use at a military installation within the CVP marketing area, or to a negatively affected customer.

DATES: The comment period on the proposed procedures will begin with the publication of this notice in the **Federal Register** and will end August 10, 1994. To be assured consideration, all written comments should be received by Western by the end of the comment period. Western will hold a public information forum on the proposed NDA Act Procedures at 9 a.m. on July 27, 1994. A public comment forum on the proposed NDA Act Procedures will follow at 1 p.m. on July 27, 1994. The forums will be held at the Holiday Inn-Holidome, 5321 Date Avenue, Sacramento, California.

ADDRESSES: All written comments regarding the proposed procedures to implement the requirements of the NDA Act should be directed to Mr. James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097. All documentation developed or retained by Western for the purpose of developing these procedures will be available for inspection and copying at the Sacramento Area Office located at the above address.

FOR FURTHER INFORMATION CONTACT: Zola M. Jackson, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4421.

After all public comments have been thoroughly considered, Western will prepare and publish the final NDA Act Procedures in the **Federal Register**.

SUPPLEMENTARY INFORMATION: On October 5, 1992, Western's Sacramento Area Office published notice of the Final 1994 Power Marketing Plan, Central Valley Project, California (57 FR 45782), governing allocations of 529.946 MW of Power from the CVP. That notice provided the final allocation of a total of 119.223 MW of Power to certain Department of Defense (DOD) military installations, as specified in Appendix A herein. Contracts for such Power were entered into for a term ending December 31, 2004. The power contracts with the DOD agencies allow for certain shifts of Power among military installations with approval by Western. Effective November 30, 1993, such shifts became subject to the NDA Act.

As of the date of publication of this **Federal Register**, the following military installations are scheduled to close pursuant to the 1990 Act:

Military installations	Long-term firm power	Type III withdrawable	Total
Naval Air Station, Moffett Field, CA	4.170	2.270	6.440
Naval Station, Treasure Island, CA	3.020	2.581	5.601
Naval Shipyard, Mare Island, Vallejo, CA	20.020	2.148	22.168
Totals	27.210	6.999	34.209

Western is providing notice by this **Federal Register** that 34.209 MW of the total possible 119.223 MW (as shown in Appendix A) will be allocated pursuant to the final NDA Act Procedures on a first-come, first-served basis beginning 30 days after publication of the final procedures. As any of the remaining amount of 85.014 MW becomes available for allocation, pursuant to the NDA Act, Western will provide

notification of the availability of that Power.

Proposed Procedures for the NDA Act

These proposed procedures address how Western plans to allocate up to 119.223 MW of CVP contract rate of delivery (CROD) provided as of November 30, 1993, to military installations closed or approved for closure pursuant to the 1990 Act. When determining who will receive Allocations of Power, Western will exercise its discretion as provided by law.

A. Acronyms and Definitions

As used herein, the following acronyms and definitions when used in initial capitalization, whether singular or plural, shall have the following meanings:

Allocation: An offer by Western to sell to an applicant a specified type and quantity of NDA Act Power made available by Western in accordance with the final NDA Act Procedures.

Allottee: A Preference Entity receiving an Allocation pursuant to the final NDA Act Procedures.

Closed Military Installation: A military installation in the CVP Marketing Area which is closed or approved for closure pursuant to the 1990 Act.

Contract Rate of Delivery (CROD): The maximum amount of Power served by Western on an annual basis under contract between a contractor and Western, and as it may be reduced or increased in accordance with applicable law or contractual terms.

Contract 2948A: Contract No. 14–06–200–2948A between the Pacific Gas and Electric Company and Western, which provides for certain sales, exchanges, and transmission of electric Power.

CVP: The Central Valley Project, a multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of Bakersfield, operated by the Bureau of Reclamation.

CVP Marketing Area: The area which generally encompasses the CVP water basin in northern and central California extending from the Cascade Range in northern California to the plains along the Kern River south of Bakersfield.

Final Withdrawal Procedures: Those procedures published in the **Federal Register** on March 5, 1986 (51 FR 7702), which specify the methods to be used by Western for the adjustment of CROD under varying circumstances.

Long-Term Contract: A contract offered to a Preference Entity who is promoting an economic development project at either a Priority-One Base or a Priority-Two Base.

Long-Term Firm NDA Act Power: Firm Power allocated by Western and subject to the terms and conditions specified in an electric service contract and the final NDA Act Procedures.

Marketing Plan: The Final 1994 Power Marketing Plan, Central Valley Project, California (57 FR 45782).

NDA Act Power: The CVP CROD, in the amounts set forth in Appendix A, which shall be determined to be NDA Act Power by Western based on the following two conditions: (1) such CVP CROD was under contract to military installations in the CVP Marketing Area as of November 30, 1993, and (2) the military installations with such CVP CROD are closed or approved for closure pursuant to the 1990 Act.

NDA Act Power Entitlement: An amount of NDA Act Power equal to the amount of CVP CROD under contract with a Priority-One base as of November 30, 1993.

NDA Act Procedures: Those procedures adopted by Western to fulfill the requirements of the NDA Act.

Negatively Affected Customer: A Preference Entity with a contract for CVP Power from Western as of November 30, 1993, which is detrimentally affected as a result of a Closed Military Installation which is located within the service area of such Preference Entity.

Pacific Gas and Electric Company (PG&E): The investor-owned utility having a service area in northern and central California and load control responsibility for the northern and central California area.

Power: Capacity and associated energy.

Preference Entity: An entity that meets the requirements of Reclamation Law, which provides that preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Priority-One Base: A Closed Military Installation with CVP CROD as of November 30, 1993.

Priority-Three Base: A military installation, not scheduled for closure, which meets the eligibility criteria set forth in the Marketing Plan.

Priority-Two Base: A Closed Military Installation without a CVP CROD.

Short-Term Contract: A contract offered on a temporary basis to a Preference Entity at a Priority-Three Base or to a Negatively Affected Customer.

Type III Withdrawable NDA Act Power: Firm Power which is withdrawable to protect the 1,152–MW Load Level before withdrawal of other types of noninterruptible Power and which is subject to additional terms and conditions specified in an electric service contract.

Unutilized NDA Act Power: NDA Act Power which is not allocated under the final NDA Act Procedures.

Western: Western Area Power Administration, United States Department of Energy (DOE), a Federal power marketing administration responsible for marketing the surplus generation from Federal hydroelectric multipurpose projects pursuant to Reclamation Law and the DOE Organization Act (91 Stat. 565, 42 U.S.C. § 7101 *et seq.*).

1,152–MW Load Level: The maximum simultaneous demand that Western provides, and that PG&E is obligated to support, in accordance with the terms of Contract 2948A.

B. Reclassification of CVP CROD to NDA Act Power

If at any time through November 30, 2003, an amount of CVP CROD set forth in Appendix A is determined to be NDA Act Power by Western, Western will administratively reclassify that amount of CVP CROD to NDA Act Power. Western shall recall that amount of CVP CROD from the military branch with a contractual right for that CVP CROD, and Western shall amend the associated contract to reflect the recall of that amount of reclassified CROD. At that time, Western shall offer the military branch the right to shift any remaining CVP CROD among the bases with CVP CROD at the time of the recall. The NDA Act Power will be offered to the military branch it was recalled from, under a short-term contract, subject to Western allocating all or part of such NDA Act Power first to a qualified applicant with a greater right to such NDA Act Power pursuant to the final NDA Act Procedures.

C. Types of Service

1. Long-Term Firm NDA Act Power

Western proposes to allocate up to a total of 106.000 MW as Long-Term Firm NDA Act Power (identified in Appendix A), as such Power becomes available due to base closures pursuant to the 1990 Act.

2. Type III Withdrawable NDA Act Power

Western proposes to allocate up to a total of 13.223 MW as Type III

Withdrawable NDA Act Power (identified in Appendix A), as such Power becomes available due to base closures pursuant to the 1990 Act.

D. Types of Contracts

1. Long-Term Contracts

Long-Term Contracts may be offered to Preference Entities promoting an economic development project at a Closed Military Installation. The termination date of any such contract shall be no later than December 31, 2004, and such contracts shall be subject to the final NDA Act Procedures and the Final Withdrawal Procedures.

2. Short-Term Contracts

Short-Term Contracts may be offered to Preference Entities at a Priority-Three Base or to a Negatively Affected Customer. Western shall have the right to recall all or any part of the NDA Act Power CROD under such Short-Term Contract upon giving 6 months' written notice. The termination date of the contract shall be no later than December 31, 2004, and such contract shall be subject to the final NDA Act Procedures and the Final Withdrawal Procedures.

E. General Eligibility Criteria

General eligibility criteria apply to applicants seeking an Allocation of NDA Act Power under the final NDA Act Procedures. Criteria 1 through 6 shall apply to applicants who are promoting an economic development project at a Closed Military Installation. Criteria 4 through 7 shall apply to all other applicants seeking an Allocation of NDA Act Power.

1. Applicant must have an economic development project plan that fulfills the following criteria:

(i) Promotes the establishment or expansion of industrial, commercial, or governmental facilities at the Closed Military Installation, and

(ii) Helps create or retain jobs in the near term and assists in the creation of additional long-term employment opportunities. The economic development project plan must include a specific plan for hiring the unemployed and underemployed persons from the area near the Closed Military Installation, and

(iii) Has been approved by the appropriate governing body of the military installation in which it is, or will be, located and has community support, which is demonstrated by appropriate local government agency's written approval of the economic development project plan, and

(iv) Is supported by public and/or private sector investment and can present evidence of adequate funding, and

(v) Demonstrates that necessary permits, land acquisitions, or options on land and right-of-way have been obtained; demonstrates either that ownership or a long-term lease of the electrical distribution system has been obtained; and demonstrates that all other legal requirements of the application process have been satisfied.

2. The economic development project must occur at a Closed Military Installation.

3. Applicant must provide documentation certifying that the entity operating the economic development project is eligible to exist and operate at the Closed Military Installation that is the site of the economic development project.

4. Applicant must qualify as a Preference Entity.

5. Applicant must be located within the CVP Marketing Area.

6. An applicant's load at each delivery point shall be no less than an annual peak of 500 kW.

7. Those applicants applying for NDA Act Power to be used at a Priority-Three Base must exist and operate and be ready, willing, and able to receive and use, or receive and distribute such NDA Act Power beginning on the date of application. Those applicants applying for NDA Act Power as a Negatively Affected Customer must be a Preference Entity with a contract for CVP Power from Western as of November 30, 1993.

F. Applications for NDA Act Power

Prospective applicants may begin requesting NDA Act Power from Western at any time later than 30 days after publication of the **Federal Register** notice detailing the final NDA Act Procedures, except that requests for applications will not be considered after November 30, 2003. Requests shall be considered on a first-come, first-served basis.

1. Letter of Interest

(i) To be considered for NDA Act Power, each prospective applicant must first submit to the Area Manager, Sacramento Area Office, a letter of interest in receiving NDA Act Power. In the letter of interest, the prospective applicant must indicate whether it is either a Preference Entity requesting an allocation of NDA Act Power for use at a Priority-One, Priority-Two, or Priority-Three Base, or a Negatively Affected Customer.

(A) For Preference Entities requesting an allocation of NDA Act Power to be used at a Priority-One, Priority-Two, or Priority-Three Base, the letter of interest must also indicate the Closed Military Installation where the NDA Act Power will be used, and the estimated date when the economic development project plan will be completed.

(B) Negatively Affected Customers must also identify in the letter of interest, the Closed Military Installation that is located within its service area and the direct effects of the closing of that military installation on the Negatively Affected Customer.

(ii) If the letter of interest does not meet the criteria set forth in F.1.(i) (A) and (B) above, Western will notify the requestor within 60 days of receiving the request.

(iii) If the letter of interest meets the criteria set forth in F.1.(i) (A) and (B) above, Western will determine whether NDA Act Power can be made available to meet the request.

(A) If NDA Act Power is available, Western shall mail an applicant profile data (APD) form to the prospective applicant within 60 days of receiving the request. A completed application package which contains all of the information listed on the APD will be required. This ensures that Western will have a uniform basis upon which to evaluate the applications.

(B) If NDA Act Power is not available, Western will send a letter to the prospective applicant within 60 days of receiving the letter of interest. This letter will state that there is no NDA Act Power currently available to meet the request. Western will place the prospective applicant's name on a list of interested parties. At any time that NDA Act Power becomes available, Western will send a notice of availability to all interested parties from which Western has received a letter of interest and mail an APD form to the prospective applicant.

2. Applicant Profile Data (APD):

The content and format of the APD is outlined below. The information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable estimates that are available. The applicant should note any requested information that is not applicable or not available. The APD must be typed and two copies submitted by certified mail to the address provided by Western's Sacramento Area Office. The burden of ensuring consistency of the content of both copies rests with the applicant. Western is not responsible for errors in data or missing pages.

All items of information in the APD should be answered as if prepared by the organization seeking the Allocation.

The application package shall consist of the following:

(i) Applicant.

(A) Applicant's name and address.

(B) Person(s) representing applicant: Please provide the name, address, title, and telephone number of such person(s).

(C) Type of organization: For example, municipality, rural electric cooperative, irrigation district, State agency, or Federal agency.

(D) Parent organization.

(E) Names of members.

(F) Applicable law under which organization was established.

(ii) The proposed economic development project plan, including the name of the military installation on which the economic development project is proposed.

(iii) Documentation certifying that the entity operating the economic development project is eligible to exist and operate at the Closed Military Installation.

(iv) Service Requested:

The amount of electrical service requested.

(v) Loads:

Projected maximum demand (kilowatts (kW)) and energy use (kilowatthours (kWh)) for each month for a period of 5 calendar years, beginning on the proposed date that the economic development project begins operating.

(vi) Transmission:

(A) Points of delivery: Provide the preferred point(s) of delivery on Western's system or a third-party's system, the required voltage of service, and the capacity desired at each point of delivery.

(B) Transmission arrangements: Describe the transmission arrangements necessary to deliver Power to the requested points of delivery.

(vii) Other Information:

The applicant is welcome to provide any other information pertinent to receiving an Allocation.

(viii) Signature:

The signature and title of an appropriate official who is able to attest to the validity of the information submitted and who is authorized to submit the application is required.

3. Western's Consideration of Applications

(i) When the application package is received by Western, Western will verify that the general eligibility criteria set forth in Section E. have been met, and that all items requested in the APD have been provided.

(A) Western will request in writing additional information from any applicant whose application package is determined to be deficient. The applicant shall have 60 days from the postmark date on Western's request to provide the information.

(B) If Western determines that the applicant does not meet the general eligibility criteria, Western will send (within 60 days of Western's receipt of the application package) a letter explaining why the applicant did not qualify.

(C) If the applicant has met the general eligibility criteria, Western will determine the amount of Power to be allocated pursuant to the general allocation and contract principles set forth in Section G. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amounts and types of available Power.

(ii) All NDA Act Power shall be allocated according to the procedures set forth in the general allocation and contract principles.

(iii) If Western determines that reallocations are necessary to fulfill the applicant's request, Western will initiate the reallocation procedures set forth in the general allocation and contract principles.

(iv) In the event that two or more applicants are requesting NDA Act Power and Western does not have enough NDA Act Power available to meet those requests, Western shall use its discretion to determine the amounts of NDA Act Power to be allocated. Western shall use information contained in the application package, including, if applicable, the economic development project plan to make its decision.

(v) Western reserves the right to determine the amount of NDA Act Power to allocate to an applicant, as justified by the applicant in its application package, including, if applicable, the economic development project plan. As loads increase at a Priority-One Base, the Allottee may request and Western may allocate any amount of NDA Act Power up to the Priority-One Base's NDA Act Power Entitlement to meet such increase in loads. If necessary, Western may recall NDA Act Power under the general allocation and contract principles to allocate to the Priority-One Base.

G. General Allocation and Contract Principles

The general allocation criteria and contract principles established in the Marketing Plan shall apply to Allocations of NDA Act Power. To meet the specific requirements of the NDA Act, Western shall also apply the following allocation criteria to all applicants seeking an Allocation of NDA Act Power. All Allocations of NDA Act Power shall be at the sole discretion of Western and shall be determined on a case-by-case basis.

Allocations of NDA Act Power will be made in amounts solely determined by Western, subject to the final NDA Act Procedures.

1. Allocation Rights:

Western will allocate NDA Act Power to qualified applicants based on the following hierarchy:

(i) First, for a military load at a Priority-One Base, or to qualified Preference Entities promoting economic development at a Priority-One Base.

Such first right to NDA Act Power will be limited to the NDA Act Power Entitlement designated for a Priority-One Base.

(ii) Second, to a Preference Entity at a Priority-One Base for amounts in excess of the NDA Act Power Entitlement for such base, to serve a military load or to promote an economic development project; or to a Preference Entity promoting an economic development project at a Priority-Two Base.

NDA Act Power allocated under this paragraph will be subject to recall upon a 3-year written notice in order to fulfill an Allocation to a Priority-One Base which has not fully utilized its NDA Act Power Entitlement under G.1.(i) above.

(iii) Third, to a military branch which had a CVP CROD at a Closed Military Installation as of November 30, 1993, for use at a Priority-Three Base within that military branch within the CVP Marketing Area.

NDA Act Power allocated under this paragraph will be subject to recall upon a 6-month written notice in order to serve a Priority-One or Priority-Two Base.

(iv) Fourth, to any military branch for use at a Priority-Three Base within the CVP Marketing Area, or to a Negatively Affected Customer.

NDA Act Power allocated under this subparagraph will be subject to recall upon a 6-month written notice to serve a Priority-One or Priority-Two Base, or a Priority-Three Base pursuant to G.1.(iii) above.

2. Allocation of NDA Act Power

Western will use the following procedures to allocate NDA Act Power to a qualified applicant:

(i) Western will determine whether sufficient Unutilized NDA Act Power is available to fulfill the applicant's request.

(ii) If sufficient Unutilized NDA Act Power is available to fulfill the

applicant's request, Western shall allocate the amount needed.

(iii) If sufficient Unutilized NDA Act Power is not available to fulfill the applicant's request, Western shall allocate all Unutilized NDA Act Power and recall and reallocate NDA Act Power CROD to fulfill the request by following the reallocation procedures stated in G.3. below.

(iv) To ensure the most equitable distribution of long-term firm NDA Act and Type III Withdrawable NDA Act Power, Western proposes that each Allocation of NDA Act Power shall be determined as follows:

$$\frac{D}{D+E} = \text{Percentage of given Allocation comprised of Long – Term Firm NDA Act Power}$$

$$\frac{E}{D+E} = \text{Percentage of given Allocation comprised of Type III Withdrawable NDA Act Power}$$

D is defined as Long-Term Firm NDA Act Power available at the time of the Allocation.

E is defined as Type III Withdrawable NDA Act Power available at the time of the Allocation.

If using the above procedure would result in an Allocation of Long-Term Firm NDA Act Power which is less than 500 kW, Western will modify the procedure to ensure that the Allottee receives a minimum of 500 kW of Long-Term Firm NDA Act Power.

(v) Allocations will be made only to those applicants who qualify pursuant to the final NDA Act Procedures. The NDA Act Power must be used at a Closed Military Installation or a Priority-Three Base, or the NDA Act Power must be used by a Negatively Affected Customer.

(vi) The Allottee has the right to purchase NDA Act Power only when a new electric service contract between Western and the Allottee has been executed and when all conditions precedent in that contract have been satisfied.

(vii) To consummate any Allocation of NDA Act Power, an electric service contract shall be executed within 6 months of a contract offer by Western, unless otherwise agreed in writing by Western.

(viii) Western reserves the right to recall any amount of NDA Act Power CROD from an Allottee if the NDA Act Power CROD allocated is in excess of the loads being served by the Allottee.

(ix) Subject to the final NDA Act Procedures, Western's Administrator has the sole discretion to reallocate any NDA Act Power CROD that becomes available for marketing if an Allottee has failed to accept a contract within the period allowed, or if a contract has terminated, subject to the final NDA Act Procedures.

3. Reallocation Procedures

When Western must recall NDA Act Power CROD in order to meet a request for NDA Act Power, Western will use the following procedures and hierarchy:

(i) Allottees receiving Power pursuant to section G.1.(iv) above. This Power is subject to recall by Western upon a 6-month written notice.

(ii) Allottees receiving Power pursuant to section G.1.(iii) above. This Power is subject to recall by Western upon a 6-month written notice.

(iii) Allottees receiving Power pursuant to section G.1.(ii) above. This Power is subject to recall by Western upon a 3-year written notice.

(iv) If Western determines that a partial recall of NDA Act Power from any of the priority groups identified above is necessary to fulfill the request, Western shall apply the following formula to determine the amount of NDA Act Power to be recalled from each Allottee.

$$\frac{A}{B} \times C$$

A is defined as each Allottee's contribution to the sum of the NDA Act Power CROD for all Allottees in the priority group.

B is the sum of all Allottees' NDA Act Power CROD in the priority group.

C is the requested amount to be recalled from the priority group.

4. Withdrawal Procedures

When Western is required to initiate withdrawals of Type III Withdrawable NDA Act Power pursuant to the Final Withdrawal Procedures, Western shall determine the amount to be withdrawn from each Allottee by using the Final Withdrawal Procedures. Western will then total the amounts to be withdrawn from each Allottee and will use the following hierarchy to initiate withdrawals of the Type III Withdrawable NDA Act Power:

(i) Allottees receiving Power pursuant to section G.1.(iv).

(ii) Allottees receiving Power pursuant to section G.1.(iii).

(iii) Allottees receiving Power pursuant to section G.1.(ii).

(iv) Allottees receiving Power pursuant to section G.1.(i).

(v) If Western determines that a partial withdrawal of Type III Withdrawable NDA Act Power from any of the above-mentioned groups is necessary, Western shall apply the following formula to determine the amount of Type III Withdrawable NDA Act Power to be withdrawn.

$$\frac{A}{B} \times C$$

A is defined as each Allottee's contribution to the sum of the Type III Withdrawable NDA Act Power for all the Allottees within the group.

B is the sum of all Allottees' Type III Withdrawable NDA Act Power within the group.

C is the requested amount of Type III Withdrawable NDA Act Power to be withdrawn from the group.

5. Contract Terms for the Purpose of NDA Act Power

(i) Long-Term Contracts:

Western proposes that Long-Term Contracts entered into under the final NDA Act Procedures shall provide for electric service for a period ending by December 31, 2004, and be subject to the reallocation procedures set forth in the final NDA Act Procedures. The effective date of the Long-Term Contract shall be determined by Western at the time of the contract offer. To abide by the requirements of the NDA Act, Western shall have the right to recall all or any part of the NDA Act Power CROD.

(ii) Short-Term Contracts:

Western proposes that Short-Term Contracts entered into under the final NDA Act Procedures shall provide for electric service during a temporary period ending by December 31, 2004, subject to the reallocation procedures set forth in the final NDA Act Procedures. The effective date of the Short-Term Contract shall be determined by Western at the time of the contract offer. To abide by the requirements of the NDA Act, Western shall have the right to recall all or any part of the NDA Act Power CROD.

(iii) For any applicant requesting NDA Act Power to be used for an economic development project, the point of delivery for the NDA Act Power must be at the Closed Military Installation where the NDA Act Power will be used, unless otherwise agreed to by Western.

(iv) The minimum Long-Term Firm NDA Act Power CROD shall be 500 kW.

(v) Transmission Service:

All transmission arrangements beyond Western's CVP system are the full responsibility of the Allottee. Western will assist the Allottee in obtaining third-party transmission arrangements with PG&E for delivery of Power allocated under the final NDA Act Procedures. Nonetheless, each Allottee is ultimately responsible for obtaining its own delivery arrangements. Western reserves the right to terminate a contract if the Allottee is unable to arrange for the transmission necessary to receive the CROD within 6 months of the execution of the contract.

(vi) For those Allottees that receive NDA Act Power to be used at a Closed Military Installation, the following provisions must be complied with:

(A) Western reserves the right to terminate a contract if the Allottee cannot demonstrate that it is using the NDA Act Power for an economic development project within 1 year of the execution of the contract, unless otherwise agreed.

(B) The Allottee must provide a report to Western each January 15, which describes the benefits of the NDA Act Power CROD being passed on to the organization operating the economic development project. This report must be provided to Western in such a way that Western can separately identify the composite energy and capacity costs stated in mills per kWh of NDA Act Power and non-NDA Act Power. The report must also show that the economic development project is still in operation.

(C) Western, at its sole discretion, shall have the right to either withdraw NDA Act Power or terminate its contract with the Allottee upon 30 days' written notice if the Allottee does not comply with G.5.(vi)(B) above for each year of the contract.

(vii) Standard Provisions:

The contracts entered into as a result of the final NDA Act Procedures will incorporate Western's standard provisions for power sales contracts, resale of electric energy, and conservation and renewable energy in addition to the General Power Contract Provisions. Western is in the process of developing procedures to require that all long-term firm customers develop an integrated resource plan consistent with the Energy Policy Act of 1992. It is anticipated that these procedures will be effective in late 1994.

APPENDIX A

[The military installations receiving CVP Power and their respective CVP CRODs as of November 30, 1993, are listed below]

Military installations	Long-term firm power	Type III withdrawable	Total
Parks Reserve Forces Training Area, Dublin, CA	0.500	.....	0.500
Defense Distribution Depot, San Joaquin, CA (Sharpe Facility)	4.000	.....	4.000
Defense Distribution Depot, San Joaquin, CA (Tracy Facility)	3.800	.....	3.800
Naval Weapons Station, Concord, CA	2.170	0.098	2.268
Naval Radio Station, Dixon, CA	1.040	.....	1.040
Naval Air Station, Lemoore, CA	16.000	.....	16.000
Naval Air Station, Moffett Field, CA	4.170	2.270	6.440
Naval Security Group Activity, Skaggs Island, CA	0.650	.....	0.650
Naval Communication Station, Stockton, CA	3.630	.....	3.630
Naval Station, Treasure Island, CA	3.020	2.581	5.601
Naval Shipyard, Mare Island, Vallejo, CA	20.020	2.148	22.168
Beale AFB, Marysville, CA	20.507	1.068	21.575
McClellan AFB, Sacramento, CA	15.094	1.906	17.000
Onizuka AFB, Menlo Park, CA	.....	0.500	0.500
Travis AFB, Fairfield, CA	11.299	1.352	12.651
Travis Wherry, Fairfield, CA	0.100	1.300	1.400
Totals	106.00	13.223	119.223

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that (1) this rulemaking relates to services offered by Western

and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an Allocation from Western would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and implementing regulations issued by the Council on Environmental Quality, 40 CFR § 1500 *et seq.*, and the Department of Energy, 10 CFR § 1021, require that the environmental effects of agency decisions be studied and considered by decision makers. Studies were made to determine whether there were significant impacts to the environment as a result of the original allocation of this Power to the military installations. These studies and analysis are published in the Revised Environmental Assessment and Finding of No Significant Impact which were prepared by Western for its Sacramento Area Office 1994 Power Marketing Plan. Western is examining the applicability of the 1994 Revised Environmental Assessment to these Power allocations.

Paperwork Reduction Act Of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is requested of the public. OMB has issued a final rule on the Paperwork Burdens on the Public, 48 FR 13666, March 31, 1983.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued at Washington, DC, June 16, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–15980 Filed 7–5–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5008–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: comments must be submitted on or before August 5, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Secondary Brass and Bronze Production Plants (Subpart M). (EPA ICR # 1604.04; OMB# 2060–0110). This is a renewal of a currently approved collection.

Abstract: Owners or operators of brass and bronze production facilities must notify EPA of construction, reconstruction, modification, startup, shutdown, and malfunction of reverberatory and electric furnaces of 1,000 kg or greater production capacity, and blast furnaces of 250 kg/hr or greater production capacity. Owners or operators must record all data and calculations and results of initial performance tests and submit that data to EPA. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period in which the monitoring system is inoperative. Recurring compliance reports are not required under this standard. EPA uses the data to determine the ability of each plant to comply with the emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to be 1.5 hours per source for recordkeeping annually.

Respondents: Owners and operators of secondary brass and bronze production plants.

Estimated No. of Respondents: 5.

Estimated No. of Responses Per Respondent: None.

Estimated Total Annual Burden on Respondents: 8 hours.

Frequency of Collection: Not applicable.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 24, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16335 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5008–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 5, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contract Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION: .

Office of Solid Waste and Emergency Response

Title: Spill Prevention, Control, and Countermeasures (SPCC) Plans (EPA No. 0328.04; OMB No. 2050–0021).

Abstract: This ICR is an extension of an existing collection for Spill Prevention, Control, and Countermeasures (SPCC) planning requirements in support of the Clean Water Act at paragraph (1) Section 311 (j), and described at 40 CFR 112. The information will be used by the EPA to ensure that oil spill prevention planning

occurs, thereby ensuring compliance with the requirements of 40 CFR 112.

Under this ICR, owners or operators of affected facilities must: (1) Prepare the SPCC plan (40 CFR 112.3 and 112.7), (2) maintain the plan and appropriate records (40 CFR 112.3 and 112.7(e)) if they begin operations or significantly modify their facilities during the approval period, (3) submit the plan in the event of certain discharges of oil (40 CFR 112.4), (4) revise the plan following modification of the facility (40 CFR 112.5(a)), and (5) conduct a triennial review of the SPCC plan (40 CFR 112(b)).

The SPCC plan should describe: (1) possible equipment failures that could lead to a discharge of oil from the facility (40 CFR 112.7(b)); (2) the use of required preventive measures such as appropriate containment and/or diversion structures or equipment (40 CFR 112.7(c)), or if containment is not available, an oil spill contingency plan and a written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged (40 CFR 112.7(d)); and (3) a discussion of the more detailed planning requirements (40 CFR 112.7(c)).

In addition to these general requirements, onshore facilities must maintain records of maintenance and usage of bypass valves and comparison records on past inspections of aboveground storage tanks. Offshore facilities must maintain written procedures for inspecting and testing pollution prevention equipment, keep records of well shut-in valves, prepare written instructions for contractors and subcontractors, and maintain records of inspection of submarine pipelines.

Currently there are 450,360 facilities subject to this regulation, with an estimated increase in the regulated universe of 4,549 facilities per year over the next three years. Facility records related to compliance must be maintained for three years.

Burden Statement: Public reporting burden for new facilities subject to this collection of information is estimated to range between 39.6 and 100.6 hours per response, with an average of 40.5 hours including time for reviewing the Oil Pollution Prevention regulations, searching existing data sources, gathering and maintaining data, and preparing and reviewing the SPCC plan. The annual recordkeeping burden for existing facilities is estimated to range from 5.0 to 13.9 hours per respondent, with an average recordkeeping burden of 5.5 hours including time for maintaining, reviewing and updating the SPCC plan.

Respondents: Owners or operators of subject facilities as defined at 40 CFR 112.

Estimated Number of Respondents: 4,549 new facilities will be required to prepare a plan; an annual average of 454,878 existing facilities over the next three years will be required to maintain records and submit amendments as needed.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,662,506 hours.

Frequency of Collection: On occasion (as described at 40 CFR 112.4).

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (21346), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16336 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5008–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 5, 1994.

EFFECTIVE DATE: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Needs Survey of Publicly-Owned Wastewater Treatment Works (POTWs) in the United States (EPA ICR No. 0318.06; OMB Control No. 2040–0050).

Abstract: This is an extension of an existing information collection sponsored by the Office of Water in support of the requirements set forth by Sections 205(a) and 516(b) of the Clean Water Act (CWA). The CWA requires EPA to conduct a "needs survey" every two years as a joint effort of the respondents (States, territories, and the District of Columbia), and EPA's Office of Water and Regional Offices to gather construction cost estimates and technical data on all existing and proposed POTWs. The survey results enable EPA, States and Congress to accurately assess construction requirements and develop allotment formulas for wastewater treatment resource allocations.

Respondents will provide information that includes: 1) updated technical and construction cost information on municipal wastewater treatment facilities, 2) planning documentation relevant to construction or project costs of POTWs (capital improvement plans, diagnostics results of needs for construction, etc.), 3) justification of certain specified categories of need based on construction costs curves, and 4) population anomalies relevant to POTWs. Respondents will also be asked to provide information related to combined sewer overflows (CSOs), non-point source and stormwater discharges. The majority of respondents will enter the information using EPA's on-line computerized system.

EPA will manage the conduct of the survey, perform quality control and assurance on the needs survey database, and prepare the final report to Congress using the information provided by the respondents.

Burden Statement: Public reporting burden for this collection of information is estimated to average 248 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the survey information.

Respondents: State, territorial and District of Columbia government agencies responsible for oversight of POTWs.

Estimated Number of Respondents: 56.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 13,888 hours

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St., SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16337 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00385; FRL–4898–2]

Publication of Addenda for Data Reporting; Requirements for Pesticide Assessment Guidelines (N, E, and K)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comment.

SUMMARY: This notice announces the availability of and requests comments regarding the proposed addenda which includes a draft Data Reporting Guidelines (DRG) for those environmental chemistry methods associated with Subdivision N, E, and K. This draft DRG is not intended to introduce any new data requirements or revisions into the existing guidelines. Its purpose is to further clarify technical aspects of the existing Pesticide Assessment Guidelines and to provide a format for organizing and submitting soil and water methods and their supporting data in order to facilitate their review. EPA recognizes there are sections of the draft DRG that do not apply to specific soil and water methods; therefore, registrants should exercise scientific judgement in deciding which sections apply to their methods.

DATES: Three copies of written comments must be received by Donald A. Marlow identified below on or before August 22, 1994.

ADDRESSES: The draft Data Reporting Guideline for the Pesticide Assessment Guidelines (N, E, and K) can be obtained from the pesticide public docket at the following address: 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 or by telephone: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Donald A. Marlow, Chief, Analytical Chemistry Branch (7503W), Biological and Economic Analysis Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station 1, Rm. CS 44J1, 2800 Crystal Drive, Arlington, VA 22203, (703) 308–8198 (Voice Mail).

SUPPLEMENTARY INFORMATION: The draft DRG provides the registrant with a detailed format for submitting soil and water methods to the Agency. Each method should be complete and meet the technical requirements identified in the DRG. Those methods should be sent to the Agency to support specific exposure, environmental fate, and ecological effects studies during the normal registration and reregistration cycle. Each study for which environmental chemistry methods are needed has been clearly identified below. Soil and water methods should be clearly written and capable of being repeated by chemists in Federal and state laboratories.

The draft DRG is not intended to introduce any requirements. Its purpose is to further clarify technical aspects of the existing Pesticide Assessment Guidelines and to provide a format for organizing and submitting soil and water methods used to generate study data and to facilitate their review. The studies involved are:

SUBDIVISION N - Environmental Fate

Series 164-1 - Terrestrial Field Dissipation Studies [1]

Series 164-2 - Aquatic Field Dissipation Studies

Series 164-3 - Forest Field Dissipation Studies

Series 164-5 - Long Term Soil Dissipation Studies [1]

Series 165-3 - Accumulation Studies in Irrigation Crops

Series 166-1 - Groundwater Study

SUBDIVISION E - Hazard Evaluation

Series 71-5 - Simulated and Actual Field Testing for Mammals and Birds

Series 72-7 - Simulated and Actual Field Testing and Aquatic Organisms

SUBDIVISION K - Reentry Protection

Series 132-1 - Soil Dislodgeable Residue Dissipation Studies

These addenda supercede the paragraphs in the respective guidelines and the other addenda issued by the Pesticide Program regarding soil and water methods sent to the Agency for the studies identified above.

While these addenda to the Guidelines are not mandatory, data submitters are strongly encouraged to follow the format to assure that reports will be consistent, thereby increasing the efficiency of pesticide registration, reregistration, and other regulatory activities.

This is the ninth addendum to Subdivision N-Environmental Fate (Chemistry) published by the Agency. This new addenda with the draft DRG has been sent to the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA for comment. With this notice EPA plans to make the DRG available to the public for comment in the **Federal Register**.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the registration of all pesticides that are manufactured for use in the United States. In order to obtain a registration from EPA, manufacturers must demonstrate that their pesticides do not cause any unreasonable adverse effects to human health and the environment. It is now considered appropriate to provide available soil and water residue methods to EPA because of the increased public concern regarding the contamination of the environment with pesticides. EPA will validate some of those methods and may assemble them into a new manual in order to make them available to address potential environmental problems. This DRG provides more detailed technical guidance regarding those analytical methods and amends Pesticide Assessment Guideline N, E, and K referred to earlier.

These methods may be validated in an EPA laboratory to determine if they identify and quantify the pesticide parent compound, toxicologically significant metabolites, and degradates at the level indicated. The results from the soil and water method validation program may be used to support regulatory decisions regarding the reliability and validity of the chemistry data sent to the Agency with exposure, environmental fate, and ecological effects studies.

List of Subjects

Environmental protection.

Dated: June 27, 1994.

Allen L. Jennings,

Director, Biological and Economic Analysis Division, Office of Pesticide Programs.

[FR Doc. 94–16193 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

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[1] In practice these studies are considered to be equivalent because they evaluate the persistent nature of pesticide residues in soil.

[OPP-250094; FRL-4873-2]

Exemption of Certain Substances from Requirements of the Federal Insecticide, Fungicide, and Rodenticide Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of the Environmental Protection Agency (EPA) has forwarded to the Secretary of Agriculture a proposed rule under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposal would exempt certain substances from the requirements of FIFRA. This notification to the Secretary of Agriculture is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5446.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed rule at least 60 days before signing the proposal for publication in the **Federal Register**. FIFRA also provides that the Administrator may, by agreement with the Secretary, modify or waive the time requirements of the notification. This notice announces that the Administrator of the EPA has forwarded to the Secretary of Agriculture, a proposed rule that would exempt certain substances from the requirements of FIFRA, and has requested that the Secretary comment on the proposed rule. This notice is required by FIFRA section 25(a)(2).

Dated: June 27, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94-16333 Filed 7-5-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66194; FRL-4896-5]

Notice of Intent to Cancel the Registrations of Nuclo Dry Granular Algaecide, Nuclo Dry Algaecide 90, Winterizing Algaecide, and Algicil Plus

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel (NOIC).

SUMMARY: Pursuant to section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), this Notice announces EPA's intent to cancel the following pesticide registrations for simazine products used in swimming pools, hot tubs, and whirlpool baths: Nuclo Dry Granular Algaecide (EPA Reg. No. 7124-32) and Nuclo Dry Algaecide 90 (EPA Reg. No. 7124-93), produced by Alden Leeds, Inc.; and Winterizing Algaecide (EPA Reg. No. 3432-33) and Algicil Plus (EPA Reg. No. 3432-54), produced by N. Jonas Company. EPA is taking this action because it believes that the use of the products, in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. Specifically, EPA is concerned with potential cancer and non-cancer effects resulting from exposure to simazine in swimming pools. EPA believes that the risks from this particular simazine use exceed the benefits derived from this use. Effective the date of final cancellation, EPA will not allow further sale, distribution, or use of existing stocks of these products, as described in this Notice. Holders of existing stocks are subject to FIFRA section 6(g) reporting requirements.

DATES: Requests for a hearing by a registrant must be received by the Office of the Hearing Clerk at the address given below on or before August 5, 1994, or on or before 30 days from receipt of this Notice by the registrant, whichever occurs later. Requests for a hearing by other adversely affected parties must be received by the Office of the Hearing Clerk on or before August 5, 1994.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (1900), U.S. EPA, 401 M St., SW., Washington, DC 20460. Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, 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: 3rd Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA. Telephone: 703-308-8029.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice announces EPA's intent to cancel the following pesticide registrations for simazine products used in swimming pools, hot tubs, and whirlpool baths: Nuclo Dry Granular Algaecide (EPA Reg. No. 7124-32), Nuclo Dry Algaecide 90 (EPA Reg. No. 7124-93), Winterizing Algaecide (EPA Reg. No. 3432-33), and Algicil Plus (EPA Reg. No. 3432-54). For the reasons set forth below, the Administrator has made the determination that these products, when used in accordance with widespread and commonly recognized practice, generally cause unreasonable adverse effects on the environment.

A. Organization of this Notice

This Notice is divided into 13 units. This unit provides introductory information and describes the legal authority for this action. Unit II gives the background information on how EPA arrived at its decision to cancel these products. Unit III summarizes EPA's toxicology concerns. Unit IV outlines the exposure assessment. Unit V discusses EPA's risk concerns. Unit VI examines the benefits of these products and the impact of this proposed cancellation action. Unit VII provides the risk/benefit analysis. Unit VIII describes the role of the Scientific Advisory Panel and the Secretary of Agriculture. Unit IX discusses disposition of existing product stocks. Unit X provides the required notification for possession of canceled products. Unit XI outlines the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit XII lists the references to the supporting documentation. Unit XIII gives information on the public docket.

B. Legal Authority

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA pursuant to FIFRA section 3(a) (7 U.S.C. 136a(a)). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with use instructions, precautions, and other terms and conditions of the registration.

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA (7 U.S.C. 136a(c)(5)). That standard

requires, among other things, that the pesticide performs its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (7 U.S.C. 136(bb)). This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices. The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of registration, and continues as long as the registration is in effect (*Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund V. EPA*, 510 F. 2d 1292, 1297 (D.C. Cir. 1975)).

Under FIFRA section 6(b), EPA may issue a notice of intent to cancel the registration of a pesticide product whenever it appears to the Administrator that the product, when used in accordance with widespread and generally recognized practice, generally causes unreasonable effects (7 U.S.C. 136d(b)).

Registrants and other adversely affected persons may request a hearing on the cancellation of a specified registration and use. If they do so in a legally effective manner, the registration and use will be continued pending a decision at the conclusion of an administrative hearing.

II. Background

In 1989, EPA classified simazine as a possible human carcinogen (Ref. 1). Simazine is used primarily as an agricultural herbicide; swimming pool use accounts for less than 2 percent of total simazine usage. In August 1993, EPA conducted a risk assessment for the swimming pool use (Ref. 2). The risk assessment revealed high potential cancer and non-cancer health risks to children and adults exposed to water treated with simazine algaecides.

Because of its risk concerns, EPA requested that the 13 registrants of the simazine swimming pool algaecides cease product formulation and voluntarily cancel their product registrations (Refs. 3 and 4). In response to EPA's request, nine of the registrants--A & V, Great Lakes Biochemical, Applied Biochemists, Aqua Clear Industries, Western Purity Biochemical, Poolmaster, Leslie's Pool Supplies, York Chemical, and Quantum Biochemical--requested a FIFRA section 6(f) voluntary product cancellation. Also, pursuant to FIFRA section 4(i)(5)(D), EPA canceled two registrations held by EZ-Clor Systems and one held by N. Jonas Company, for failure to pay the annual registration maintenance fees for those registrations. The cancellation order for the registrations held by these 11 registrants was published on April 15, 1994 (59 FR 18120). A separate order, cancelling the registration of Aladdin Winter Care (EPA Reg. No. 11329–17) for failure to pay the annual registration maintenance fee for that product registration, was signed on May 16, 1994. The order was published in the **Federal Register** and became effective on May 25, 1994 (59 FR 27016).

Alden Leeds and N. Jonas Co. still hold the following registrations for the following simazine products: Nuclo Dry Granular Algaecide (EPA Reg. No. 7124–32), Nuclo Dry Algaecide 90 (EPA Reg. No. 7124–93), Winterizing Algaecide (EPA Reg. No. 3432–33), and Algicil Plus (EPA Reg. No. 3432–54).

The three registrants of technical simazine--Ciba-Geigy, Drexel Chemical, and Oxon-Italia--are not supporting the swimming pool simazine use. That is, these manufacturers of the simazine active ingredient do not have their simazine products registered for swimming pool-related uses. None of Drexel Chemical's products were registered for aquatic use, and Ciba-Geigy and Oxon-Italia had ceased supporting all aquatic uses before EPA conducted its risk assessment. The aquatic-use cancellation for Ciba-Geigy, the supplier of technical simazine for the swimming pool products, was published in the **Federal Register** on July 1, 1992 (57 FR 29309) and became effective on October 9, 1992. The notice of Oxon-Italia's request for aquatic use cancellations was published in the **Federal Register** on February 9, 1994 (59 FR 6021), and became effective 90 days from that publication date. At EPA's request, Ciba-Geigy and Oxon-Italia have amended their product labels to explicitly prohibit reformulation of their products into swimming pool products; Drexel has amended its technical simazine label to prohibit formulation into aquatic-use products. Because manufacturers of simazine swimming pool products must formulate their products from technical simazine, the effect of these actions is that there is no legal source of simazine active ingredient from which the swimming pool product manufacturers may formulate any simazine products.

III. Summary of Toxicological Concerns

Based on toxicological studies in laboratory animals, EPA has determined that simazine may pose cancer and non-cancer risks to individuals exposed to this pesticide. The results of these studies, as well as the EPA classification of the carcinogenic potential of simazine, are described below.

A. Carcinogenicity

EPA reviewed the simazine toxicological data base, including rat and mouse chronic feeding/carcinogenicity studies, in its evaluation of the carcinogenic potential of simazine.

1. *Rat study.* In a 2–year chronic feeding carcinogenicity study, simazine technical was administered in the diet of 340 male and 340 female Sprague-Dawley (SD) rats (MRID No. 40614405). The study had two phases: a carcinogenicity phase and a chronic phase. An equal number of male and female rats were randomly divided into four major groups; 50 animals/sex/group were used in the carcinogenicity phase, and 30 to 40 animals/sex/group were used in the chronic phase. Animals were dosed at 0 (control), 10, 100, or 1,000 ppm of simazine for 2 years (corresponding to 0.41, 4.17, or 45.77 mg/kg/day in males; and 0.52, 5.34, or 63.10 mg/kg/day in females).

For the carcinogenicity phase, results in the female SD rats indicated that there was a statistically significant dose-related trend in mammary gland carcinomas, as well as in combined adenomas and carcinomas. The incidence of mammary gland carcinomas was statistically significantly increased at both the 100 and 1,000 ppm groups, as compared to the controls. Also, the incidence of combined adenomas and carcinomas was statistically significantly higher in the highest dose tested (HDT) group, as compared to the controls. Mammary gland carcinomas in the main study contributed to increased mortality in the HDT animals. A higher incidence of mammary gland carcinomas was also seen in the recovery study (52 weeks of treatment at 1,000 ppm, followed by 52 weeks of recovery) for the control (1/10) and the HDT (4/10) animals.

The incidence of hyperplastic changes (cystic glandular hyperplasia) in the mammary glands of female rats was statistically significantly higher in the HDT animals than in the controls. This finding correlates with the observed high incidence of tumors in the HDT group. It is generally understood that the higher tumor incidence correlates

directly with a higher incidence of hyperplastic changes.

In the female rats, the incidence of pituitary carcinomas was found to be statistically significantly higher in the HDT animals than in the controls. The incidence of pituitary adenomas was found to be extremely high in all groups. Further statistical analysis of these tumors (total tumor analysis) indicated that the incidence of combined adenomas/carcinomas in the mid- and high-dose groups was statistically significantly higher than in the controls, and also exhibited a significant increasing dose-related trend.

There was a statistically significant dose-related trend for the incidence of kidney tubular adenomas in female rats. However, the tumors occurred only at the HDT, and the incidence was not statistically significant as compared to the control animals.

In the male SD rats, the incidence of hepatocellular adenomas or carcinomas was very low in all treated and control groups. The incidence of combined hepatocellular adenomas and carcinomas was statistically significantly higher in the HDT group, as compared to the control group. These incidences fell within the historical control range for this testing facility.

A very low incidence of kidney tubular adenomas and carcinomas was seen in male rats. A statistically significant dose-related trend was observed for the incidence of carcinomas, as well as for the incidence of combined adenomas and carcinomas. However, tumors occurred only at the HDT, and tumor incidences were not statistically significantly elevated as compared to concurrent controls.

For this study, the Health Effects Division (HED) of the Office of Pesticide Programs Cancer Peer Review Committee concluded that the highest dose exceeded the Maximum Tolerated Dose (MTD) for female rats, based on excess deaths and body-weight-gain reductions. The Committee also agreed that the highest dose in male rats appeared to have exceeded the MTD, based on a significant decrease in body-weight gain. However, the mid-level dose was well below the MTD, and mammary gland tumors in the female rat were statistically significantly increased at both the mid- and high-dose levels. In addition, the Committee concluded that there was too great an interval between the mid (100 ppm) and high (1,000 ppm) doses. These factors were taken into account in the weight-of-evidence considerations that led the Committee to classify simazine as a possible human carcinogen (Ref. 2).

2. *Mouse study.* There is no evidence of a relationship between simazine exposure and carcinogenicity in the mouse. In a 1988 chronic feeding/carcinogenicity study in mice, simazine technical was administered in the diet to a group of 60 male and 60 female CD1 (ICR) BR mice at 0 (control), 40, 1,000, or 4,000 ppm for 95 weeks (MRID No. 40614404). There were no increases in neoplasms reported for any dosed group and no evidence of compound-related effect on survival or target organ toxicity.

3. *Classification of carcinogenic potential.* Based on the weight-of-evidence, the HED Cancer Peer Review Committee concluded that simazine should be classified as a Group C possible human carcinogen (Ref. 2). This determination was primarily based on results from the 2–year chronic feeding/carcinogenicity study in rats. Based on EPA's evaluation of the data presented in this study, EPA concluded that technical-grade simazine is carcinogenic in female SD rats, inducing the formation of mammary gland carcinomas. There is evidence in the published literature that simazine has genotoxic activity, and this was considered in the weight-of-evidence evaluation of simazine's carcinogenicity classification.

B. Systemic Effects

1. *Rat study.* EPA determined that the 2–year rat chronic feeding study, described in unit III. A.1. of this notice, was appropriate for assessing non-cancer risks for "competitive" exposure to simazine. A No Observed Effect Level (NOEL) of 0.52 mg/kg/day was established based on decreased body weight gain and depression of hematological parameters that occurred at 5.34 mg/kg/day. These effects, which include depressed red-blood-cell count, hemoglobin, and hematocrit, are considered to be reversible when exposure is terminated.

2. *Rabbit study.* For evaluation of non-cancer risks from "recreational" exposure to simazine, EPA based its risk assessment on the results of a rabbit developmental toxicity study (MRID No. 001611407).

In this study, 19 female New Zealand White rabbits per dose level were artificially inseminated and administered technical grade simazine once daily by gastric intubation at doses of 5 mg/kg, 75 mg/kg, and 200 mg/kg of body weight. A significant reduction in mean fetal weight and a significant increase in the incidence of fetuses with skeletal variations were observed at the 200 mg/kg dose level. Therefore, the developmental NOEL for this study is 75 mg/kg of body weight. In the mothers, significant decreases in body weight gain, tremors, and abortions were observed in the mid- and high-dose groups (75 and 200 mg/kg dose levels). The maternal NOEL was therefore established at 5 mg/kg of body weight.

IV. Exposure Assessment

EPA developed four exposure scenarios based on the frequency and duration of exposure (competitive versus recreational swimming), and on the age and weight of the swimmer (6–year–old child versus 35–year–old male). The assessment assumed exposure to the entire body through dermal, oral, buccal and sublingual, orbital and nasal, aural, and inhalation routes. High-exposure frequency, or "competitive," 6–year–old and 35–year–old swimmers are assumed to have daily exposures of 3 and 5 hours, respectively, for 150 days per year (Ref. 5). Based on these assumptions, EPA estimates that "competitive" swimmers are exposed to an Actual Daily Exposure (ADE) of 0.12 mg/kg/day for children, and 0.07 mg/kg/day for adults. Low-exposure frequency, or "recreational," swimmers of both age groups are assumed to be exposed for 30 minutes per day, 5 days a year. This low exposure results in an ADE of 0.02 mg/kg/day for children and 0.0073 mg/kg/day for adults. EPA assumed that lifetime exposure constitutes 30 years of exposure over a 75–year lifetime.

Simazine concentrations in swimming pool water were calculated based on label application rates. Although simazine is soluble to only 3.5 parts per million (ppm) in water at 68 °F, EPA assumed that swimmers could be exposed to average simazine concentrations of 5 ppm, because solubility could increase at temperatures above 68 °F.

EPA has concluded that it is not necessary to conduct a separate exposure assessment for the simazine product that is used to control algae in swimming pools during the off-season or winter months. A separate assessment is unnecessary because the exposure levels for the winter-use (winterizer) product are comparable to the exposure levels for the non-winterizer simazine swimming pool products. Label application rates for winterizer and non-winterizer products are similar. In addition, label directions do not require swimming pools that have been treated with winterizer products to be drained before they are used by swimmers. Because EPA has no data concerning simazine dissipation, EPA must assume that following initial

or subsequent winterizer treatment, simazine does not dissipate from swimming pool water. Consequently, swimmers could be exposed to unacceptable levels of simazine when winterized swimming pools are opened for use. Therefore, EPA believes that the individual risk posed to swimmers from exposure to simazine used as a winterizer is not significantly different from other exposure scenarios.

V. Risk

A. Cancer

1. *Potency factor (Q_1*).* EPA calculated the cancer potency, or Q_1*, for simazine as 1.20×10^{-1} $(mg/kg/day)^{-1}$, based on mammary gland cancer in laboratory animals. The Scientific Advisory Panel (SAP) reviewed the carcinogenicity of simazine in September 1989 and, while agreeing with the Group C classification, did not recommend the use of a quantitative risk assessment (Ref. 6). The SAP noted that certain pesticides, such as simazine, may alter endocrine physiology in the rat and influence the incidence of mammary gland tumors; the SAP therefore recommended that EPA formulate a position on the regulation of chemicals with this mechanism.

At a subsequent OPP Cancer Peer Review Committee meeting, the Peer Review Committee evaluated the SAP's recommendation and concluded that it is appropriate to use the Q_1* to quantify the carcinogenic risks from exposure to simazine until data are provided showing a hormonally mediated mechanism (Ref. 7). EPA has not received data adequate to support this hypothesis.

2. *Cancer risk.* The excess individual lifetime cancer risk is calculated by multiplying the Q_1* by the Lifetime Average Daily Exposure (LADE), expressed in mg/kg/day. EPA estimates that the excess risk to an individual exposed to simazine over a 75–year lifetime (i.e., 30 years of exposure) ranges from 4.8×10^{-6} to 1.4×10^{-3}. Risk to most competitive and recreational swimmers is estimated to fall within this range, although in some instances the risks could be higher or lower. EPA generally considers any risk to the general public greater than 1×10^{-6} to be unacceptable.

B. Non-Cancer

EPA measures non-cancer risks by calculating a margin of exposure (MOE), which is a comparison of the NOEL to actual daily exposure, both of which are expressed in milligrams of chemical dose per kilogram of body weight per day. An MOE less than 100 generally represents an unacceptable risk.

1. *Non-cancer risk to swimmers from high exposure frequency.* The high exposure frequency assumed for the competitive swimmer categories necessitated the use of a long-term toxicity study to calculate non-cancer risk. The 2–year chronic rat feeding study was therefore used to calculate the MOEs for competitive swimmers. The risks to swimmers for the non-cancer effects seen in the chronic study--reduction in body weight gain and depression of hematological parameters (anemia)--are reflected in MOEs of 4.3 for children and 7.4 for adults. The MOEs for swimmers in the competitive category, based on effects seen in the chronic feeding study, are well below 100 and therefore indicate an unacceptable risk.

2. *Non-cancer risk to swimmers from low exposure frequency.* EPA does not consider swimmers exposed at a low exposure frequency (i.e., a few short exposures per year) to be at risk of exhibiting non-cancer effects (Ref. 8). Because of the low exposure frequency assumed for the recreational swimmer categories, the rabbit developmental toxicity study was used to calculate MOEs. The effects of reduction in maternal body weight gain, abortions, and tremors were manifested at very high dose levels and are considered signs of general systemic toxicity in the test animals. EPA calculated MOEs of 250 for children and 685 for adults exposed to simazine in swimming pools. This indicates that recreational swimmers are not at risk from the effects seen in the developmental toxicity study.

The following table summarizes the risk numbers derived from the assessment:

Swimmer Category	Cancer Risk	Non-Cancer Risk (MOE)
Competitive 6–year–old (3 hours/day, 150 days/year).	2.4×10^{-3}	4.3[1]
Competitive 35–year–old male (5 hours/day, 150 days/year).	1.4×10^{-3}	7.4[1]
Recreational 6–year–old (0.5 hour/day, 5 days/year).	1.4×10^{-5}	250[2]
Recreational 35–year–old male (0.5 hour/day, 5 days/year).	4.8×10^{-6}	685[2]

[1] 2–year chronic feeding study in rats, MRID 40614405. NOEL = 0.52 mg/kg/day, based on decreased body weight gain and depression of hematological parameters at 5.34 mg/kg/day.

[2] Developmental toxicity study in rabbits (13–day length of exposure), MRID 00161407. NOEL = 5.0 mg/kg/day, based on tremors, abortions, and decreased body weight gain (all maternal toxicity effects) at 75 mg/kg/day.

VI. Benefits and Impact of Cancellation

Under FIFRA, a pesticide registration may only be maintained if the benefits of the use of the pesticide exceed the risks of use. EPA has found that at least some of the registered alternative algaecides provide comparative control at comparative prices, during summer season use. EPA has concluded that the benefits associated with Nuclo Dry Granular Algaecide, Nuclo Dry Algaecide 90, and Algicil Plus are negligible when compared to the total operating costs on a per–pool basis. The cancellation of these products for summer use will have a negligible impact on the pool industry and the public.

EPA has also found that the benefits associated with Winterizing Algaecide are relatively small. This information is based on the fact that there are a number of alternatives to simazine winterizing products on the market, and the labels of many of these alternative products indicate that they are used at a similar frequency as simazine. Although EPA has anecdotal information that suggests simazine may have a longer duration of activity, which could, if true, result in a cost savings, there are no data to support this. Therefore, EPA concludes that the loss of simazine winterizing products would have only a small impact on the swimming pool industry and the public.

The cancellation of the four products subject to this Notice will not have a significant economic impact in part because they account for only a small share of the algaecide market for swimming pool use. EPA estimates that all 22 simazine products account for less than 10 percent of the market for algaecides for swimming pool use. Registrants of 18 of these products have already requested voluntary cancellation of their registrations, or have had their registrations canceled for maintenance fee non-payment. The remaining four products subject to this

Notice account for less than 1 percent of the total swimming pool algaecide market.

The economic impact of cancelling these four products is minimized by the availability of registered alternative algaecides for swimming pool use. Because these alternatives have a substantially greater market share than simazine, the cancellation of the four products subject to this Notice should not result in significant price increases in the non-simazine products. For the same reasons, EPA does not expect market dislocations due to the inability to produce the alternative algaecides to meet demand.

Alden Leeds and N. Jonas Co. indicated to EPA that they have accounted for approximately 25,000 gallons of liquid product in their possession or in the channels of trade, and 14,000 pounds of unformulated Ciba-Geigy simazine product that Ciba-Geigy has agreed to buy back. Given the small amount of these products and the over 3 million swimming pools in the United States that could use simazine pool products, cancellation of these products would have little impact on the swimming pool industry. Section 6(b) of FIFRA requires EPA to consider the impact of cancellation upon the agricultural economy (7 U.S.C. 136d(b)). EPA has determined that the cancellation of these products will have no impact upon the agricultural economy because these products are registered for swimming pool use, and not for agricultural uses.

VII. Risk/Benefit Assessment

Under section 6(b) of FIFRA, the Administrator may cancel a pesticide due to unreasonable adverse effects, if the pesticide generally causes an "unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits" of the pesticide's use (7 U.S.C. 136d(b)).

As discussed in the preceding sections of this Notice, the cancer and non- cancer risks to human health from continued registration of Nuclo Dry Granular Algaecide, Nuclo Dry Algaecide 90, Winterizing Algaecide, and Algicil Plus are significant, while the benefits of continued registration are negligible for summer use, and are relatively small for the winterizing use. EPA believes that the risks posed by continued registration are unreasonable when compared to the benefits, and that simazine use in swimming pools should be canceled.

In making its determination to propose cancellation, EPA has also examined whether any measures short of cancellation exist to reduce exposure to acceptable levels, and has concluded that there are none. For the summer use, no measures could be identified to reduce risk to an acceptable range. For the winterizer use, EPA considered allowing registrants to retain that use, if data were submitted that showed that superchlorination of pools following simazine use eliminated the product from treated water. No such data were submitted to EPA. Therefore, EPA has determined that for both the summer and winter use, there are no acceptable measures short of cancellation.

VIII. Role of the Scientific Advisory Panel and the Secretary of Agriculture

Sections 6(b) and 25(d) of FIFRA provide certain opportunities for the FIFRA Scientific Advisory Panel (SAP) and the Secretary of the Department of Agriculture (USDA) to review and comment upon a draft NOIC, and in the case of USDA, an analysis of the impact of the proposed action on the agricultural economy. These reviews may be waived, and when they are, the Notice may be published without delay.

On April 5, 1994, EPA asked the SAP and Secretary of USDA to waive their rights to review and comment on this Notice (Refs. 9 and 10). On April 12, 1994, Nancy Ragsdale, Director, National Agricultural Pesticide Impact Assessment Program, USDA, notified EPA that the Secretary would waive review of this action (Ref. 11). On May 25, 1994, the SAP notified EPA that it waived its review of this action (Ref. 12). Because the SAP and USDA have waived their review of this action, EPA is issuing this Notice without delay.

IX. Disposition of Existing Stocks

For purposes of this Notice, existing stocks are defined as those stocks of simazine products for use in swimming pools that were in the United States and were packaged, labeled, and released for shipment prior to July 6, 1994.

EPA has an established policy for determinations concerning the sale, distribution, and use of existing stocks of canceled pesticides (56 FR 29362, June 26, 1991). That policy states that in cases where EPA has identified a significant risk concern and the registration is canceled, EPA will make existing stocks determinations on a case-by-case basis. In most cases EPA will not permit the continued sale, distribution, or use of existing stocks of a canceled product raising risk concerns unless it can be demonstrated that the benefits exceed the risks. EPA reserves the right to amend this existing stocks provision, should conditions warrant such amendment.

The swimming pool use of simazine poses unreasonable cancer and non-cancer risk. As discussed in units VI and VII of this Notice, the benefits of continued sale, distribution, and use of existing stocks are negligible and do not outweigh the risks. Finally, EPA has taken steps to minimize the amount of stocks that are currently in the hands of registrants, retailers, and distributors. In December 1993, EPA notified registrants of the risks associated with the products and asked them to stop formulating, selling, and distributing their products (Ref. 4).

EPA has determined that no person may sell, distribute, or use the existing stocks of any product subject to this Notice except for: (1) Sale or distribution up through the chain of distribution to the former registrant of that product, or (2) for lawful disposal. It is the responsibility of the basic registrants to notify any and all supplementally registered distributors of their product(s) that this Notice also applies to their supplementally registered products. Registrants may be held liable for violations committed by their distributors. Any sale, distribution, or use of existing stocks of canceled products other than as provided in this Notice will be considered a violation of FIFRA 12(a)(2)(J).

Notwithstanding any other provision of this Notice, the distribution or sale of canceled products will be allowed if such distribution or sale is for the purpose of collecting products for relabeling, reformulation, disposal, or export to a country where the use of simazine is not prohibited, or any other lawful purpose not inconsistent with the provisions of this Notice. In order for exported existing stocks of canceled simazine to qualify for this exception, such stocks must comply with all the labeling requirements identified in FIFRA section 17(1)(a) and the foreign purchaser acknowledgement requirements identified in FIFRA section 17(a)(2). In order to be considered to be in compliance with these provisions, the exporter must follow the procedures specified in the EPA's Export Policy and Procedures for Exporting Unregistered Pesticides at 40 CFR part 168, subpart D.

X. Required Notification of Possession of Canceled Products

Pursuant to FIFRA section 6(g), any producer or exporter, registrant, applicant for a registration, applicant or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide, who possesses any stocks of pesticide products containing simazine subject to

this Notice that are canceled by a final order issued either in the absence of or following a hearing on cancellation (hereafter, referred to as "affected persons," which includes affected individuals, partnerships, associations, corporations, or any organized group of persons whether incorporated or not) must notify the EPA and appropriate State and local officials of: (1) Such possession; (2) the quantity of canceled simazine pesticide product possessed; and, (3) the place at which the canceled simazine pesticide product is stored. Notification by affected persons to EPA and designated State and local officials pursuant to FIFRA section 6(g) shall be in accordance with the procedures, time frames, and requirements set out in this Unit. End users, except commercial applicators, are not required to report their stocks of canceled simazine products.

A. Pesticides Required to be Reported

Affected persons must report, pursuant to FIFRA section 6(g), the information described below for canceled simazine pesticide products that are in their possession, regardless of the ownership of that canceled simazine pesticide product. Canceled simazine product that is owned by one affected person, but is in the physical possession of another affected person who is subject to section 6(g) reporting, is to be reported by the person in physical possession of the pesticide.

The Office of Management and Budget (OMB) has given approval for the collection of information under FIFRA section 6(g), and has assigned the OMB control number 2070–0109.

B. Information that Must be Included in the Submission

To be in compliance with FIFRA section 6(g), affected persons must submit to the designated EPA and State and local officials the following information certified by a responsible company official as true and correct:

1. The identity and address of the affected person (company).

2. Name and phone number of a contact person (in the company).

3. Indication that the FIFRA section 6(g) information is being submitted for canceled pesticide products containing simazine.

4. The relationship of the affected person (company) to the canceled simazine pesticide products being reported under FIFRA section 6(g) (i.e., exporter, producer, registrant, applicant for registration, applicant for or holder of an experimental use permit, commercial applicator, distributor, retailer, etc.).

5. The street address of each location owned, leased, or operated in the United States by the submitter where the canceled simazine pesticide product is held.

6. For each location listed, the quantity (pounds, gallons, or other appropriate measure) of canceled simazine pesticide product listed by the number of units of each size container (pound, gallons, or other appropriate measure) and by EPA registration number (e.g., x units of 5 gallon containers of EPA registration number xxx–xxx).

C. When to Report

Affected persons are advised not to report until the effective date of the final order issued either in the absence of or following a hearing on cancellation. Reports of existing stocks submitted before the effective date of the cancellation are not considered to meet the reporting requirements of FIFRA section 6(g). Upon the effective date of cancellation, affected persons must submit FIFRA section 6(g) information according to the following time frames:

1. Registrants of canceled simazine must report within 30 days of the effective date of the final order.

2. Producers, exporters, applicants for a registration, applicants or holders of an experimental use permit, dealers, distributors, retailers, and commercial applicators must report within 45 days of the effective date of the final order.

3. End users are not required to report their possession of canceled products containing simazine.

D. Where to Submit Section 6(g) Information

The FIFRA section 6(g) information is to be sent to each of the following locations:

1. *EPA.* Chief, Agricultural Branch, Agricultural and Ecosystems Division, Office of Compliance, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, "Attention: FIFRA Section 6(g) Information."

2. *State.* Chief Pesticide Regulatory Official of the agency in the State government that enforces the State pesticide laws where the canceled simazine pesticide product is stored. Envelopes must be marked "Attention: FIFRA Section 6(g) Information."

3. *Local.* Chair of the Local Emergency Planning Committee (LEPC) for the location where the canceled pesticide is stored. Envelopes should be marked "Attention: Notification of Possession of Canceled Pesticides." To identify the name and address of the chair of the LEPC, contact the State Emergency Response Commission (SERC) or call the Emergency Planning and Community Right-to-Know (EPCRA) information Hotline at 1–800–535–0202.

E. Confidentiality of FIFRA Section 6(g) Information

EPA does not consider FIFRA section 6(g) information to be confidential business information (CBI) under the provisions of FIFRA section 10. Such information may be made available by EPA to the public without further notice.

F. Enforcement

Failure to submit complete and accurate FIFRA section 6(g) information, and/or failure to submit accurate section 6(g) information in the required time frames, is a violation of FIFRA section 12(a)(2)(K), and violators may be subject to civil penalties up to $5,000 per offense. Affected persons who possess canceled or suspended pesticide in multiple locations may be fined up to $5,000 per offense for each location for which the FIFRA section 6(g) information is not submitted, submitted late, incomplete, or inaccurate. Persons who knowingly submit false section 6(g) reports are in violation of FIFRA section 12(a)(2)(M) and may also be subject to civil penalties up to $5,000 per offense. Knowing violations of the requirements of FIFRA section 6(g) may also result in criminal penalties under section 14(b) of FIFRA, or 18 U.S.C. 1001.

For additional information regarding FIFRA section 6(g) requirements, contact Phyllis Flaherty or David Stangel of the Agriculture Branch, Agriculture and Ecosystems Division, Office of Compliance, at (703) 308–8383.

XI. Procedural Matters

This Notice announces EPA's intent to cancel the registrations of Nuclo Dry Granular Algaecide (EPA Reg. No. 7124–32), Nuclo Dry Algaecide 90 (EPA Reg. No. 7124–93), Winterizing Algaecide (EPA Reg. No. 3432–33), Algicil Plus (EPA Reg. No. 3432–54), and any products with these registration numbers that are supplementally distributed. This action is taken pursuant to authority in section 6(b) of FIFRA. Under FIFRA section 6(b)(1), registrants and other adversely affected parties may request a hearing on the cancellation actions that this Notice initiates. Any hearing concerning cancellation of the registration for any affected pesticide product will be held in accordance with FIFRA section 6(d). Unless a hearing is properly requested in accordance with the provisions of

this Notice, the registrations will be canceled. This unit of the Notice explains how such persons may request a hearing in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing.

A. Procedures for Requesting a Hearing

Requests for a hearing by a registrant must be received by the Office of the Hearing Clerk at the address given below on or before August 5, 1994, or on or before 30 days from receipt of this Notice by the registrant, whichever occurs later. Requests for a hearing by other adversely affected parties must be received by the Office of the Hearing Clerk on or before August 5, 1994. All registrants and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings (40 CFR part 164). These procedures require that all requests identify the specific registration by Registration Number and state the basis for objecting to the cancellation of the product for which a hearing is requested. Requests must be received by the Hearing Clerk within the applicable 30–day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR part 164). All hearings will be held in Washington, DC. In the event of a timely and effective request for a hearing, each cancellation action concerning the specific use of the specific registered product that is the subject of the hearing request will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation of a specific product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30–day period, registration of that product will be canceled automatically.

B. Separation of Functions

EPA's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of Administrative Law Judges, the Environmental Appeals Board, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: the Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any ex parte communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

XII. References

1. June 16, 1989, "Peer Review of Simazine." HED Peer Review Committee review of the weight of the evidence on simazine with particular reference to its oncogenic potential.

2. August 18, 1993, memo from Henry Spencer, HED/OPP, to Joanne Miller, RD/OPP. RE: exposure assessment and subsequent assessment of cancer risk from simazine-treated swimming pools.

3. November 29, 1993, letter from Daniel Barolo, SRRD/OPP, to the simazine algaecide registrants. RE: EPA's risk concerns and invitation to December 6, 1993 meeting.

4. December 8, 1993, letter from Daniel Barolo to the simazine algaecide registrants. RE: request for voluntary cancellation.

5. July 28, 1993, memo from Judy Smith, HED/OPP, to Henry Spencer. RE: request for swimmer exposure assessment for simazine-treated pools.

6. October 16, 1989, Scientific Advisory Panel (SAP), "A Set of Scientific Issues Being Considered by the Agency in Connection with the Peer Review Classification of Simazine as a Class C Oncogen."

7. May 24, 1990, "Peer Review of Simazine Following SAP Review." HED Peer Review Committee met to reconsider the evaluation of simazine following the presentation to the SAP.

8. November 23, 1993, memo from Henry Spencer to Joanne Miller. RE: addendum to assessment of non-cancer health risk from simazine-treated swimming pools.

9. April 5, 1994, memo from Douglas Campt, OPP, to Bruce Jaeger, SAP. RE: Request for waiver of SAP's right to review the NOIC.

10. April 5, 1994, letter from Douglas Campt to Nancy Ragsdale, USDA. RE: Request for waiver of USDA's right to review the NOIC.

11. April 12, 1994, letter from Nancy Ragsdale to Douglas Campt. RE: USDA waiver of NOIC review.

12. April 25, 1994, memo from R. Bruce Jaeger to Douglas Campt. RE: SAP waiver of NOIC review.

XIII. Public Docket

The public docket containing the above supporting documentation is located at 1921 Jefferson Davis Highway, Room 1128, Arlington, Virginia. The references can be viewed from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: June 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–16334 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 8G3571/T663; FRL 4872–7]

Triclopyr; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the herbicide triclopyr and its metabolites in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire June 23, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the

Federal Register of August 15, 1991 (56 FR 40614), stating that temporary tolerances had been renewed for the combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyloxyacetic acid) and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine in or on the raw agricultural commodities rice grain at 0.5 part per million (ppm) and rice straw at 8.0 ppm, and for triclopyr in poultry meat, poultry fat, and meat byproducts (except kidney) at 0.2 ppm, poultry kidney at 1.0 ppm and eggs at 0.3 ppm. These tolerances are renewed in response to pesticide petition (PP) 8G3571, submitted by DowElanco, 9002 Purdue Rd., P.O. Box 681428, Indianapolis, IN 46268.

The company has requested a 1–year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 62719-EUP-8, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DowElanco must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 23, 1995. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing 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

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

Authority: 21 U.S.C. 346a(j).

Dated: June 22, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–16194 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00386; FRL–4899–7]

Statement of Policy for Water Soluble Packaging; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a proposed policy for water soluble packaging. That policy has been developed in a draft Pesticide Regulation (PR) Notice entitled, "Water Soluble Packaging (WSP)" which is available upon request. Interested parties may request a copy of the Agency's proposed policy as set forth in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number [OPP–00386], must be received on or before August 19, 1994.

ADDRESSES: The PR Notice is available from Jeff Kempter, By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5448.

Submit written comments to: By mail: Public Docket and Freedom of Information Section, 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 Highway, Arlington, VA.

Information submitted and any comment(s) 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(s) 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. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Kempter (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5448.

SUPPLEMENTARY INFORMATION: Water soluble packaging (WSP), which usually consists of polyvinyl alcohol, is used to package certain powdered formulations of pesticides to minimize exposure to pesticide handlers via inhalation. EPA is proposing to streamline the registration requirements for WSP to encourage use of such "reduced risk" packaging. Under the proposed policy, EPA will register WSP along with other forms of packaging under one registration number under the following conditions:

1. The confidential statement of formula (CSF) must list the chemical name(s), trade name(s), supplier(s), CAS Registry number(s), and amount(s) of components of the polyvinyl alcohol film and printing ink(s). All WSP components must have been previously cleared and not listed as ingredients to the product.

2. The "Directions For Use" on the label must provide mixing directions in terms of WSP packages to be added per unit volume of water.

To add WSP to an existing registration, a registrant would notify EPA by submitting a letter certifying compliance with the PR Notice, and enclosing two copies of the CSF and one copy of the revised label.

This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. If, after reviewing any comments, EPA determines that changes to the Policy are warranted, the Agency will revise the draft PR Notice prior to release.

List of Subjects

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

Dated: June 27, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–16331 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00125A; FRL–4872–3]

Toxic Substances Control Act Confidential Business Information Claims Policies and Regulations; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that EPA is making available a final paper entitled *Final Action Plan: TSCA Confidential Business Information Reform* discussing issues regarding Toxic Substances Control Act (TSCA) Confidential Business Information (CBI) policies and certain future actions by EPA which may change CBI requirements or TSCA implementation.

DATES: The paper will be available after July 7, 1994.

ADDRESSES: Copies of the paper may be obtained from the TSCA Hot Line (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, or TSCA Nonconfidential Information Center (7407), Environmental Protection Agency, NE–B607, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–7099.

FOR FURTHER INFORMATION CONTACT: Scott M. Sherlock, Telephone: (202) 260–1536, or Carl J. Eichenwald, Telephone: (202) 260–3956, Information Management Division (7407), Environmental Protection Agency, 401 M St., SW., Rm. E–118, Washington, DC 20460, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In September 1992, EPA released a commissioned study entitled *Influence of CBI Requirements on TSCA CBI* (the "study"). The study was commissioned as part of an EPA initiative to improve TSCA's utilization as a toxics information dissemination statute. The study provided an in depth analysis of CBI claims, submitter procedures for making such claims, EPA review and challenges of claims, and effects of CBI claims on information which is not eligible for confidential treatment by the standards established in TSCA and its implementing regulations, including 40 CFR part 2, on EPA's toxics information mission.

After releasing the study, EPA has met with a variety of state, environmental, labor, and industry groups. In addition, EPA conducted a public meeting regarding the study. EPA carefully considered the recommendations provided in the study and the comments it has received from the public. Based in part on the recommendations and comments received, EPA formulated a working paper entitled *Proposed Actions to Reform TSCA Confidential Business Information* (the "proposal") discussing the issues raised by EPA, the study, and the various comments.

The Agency conducted a second public meeting after the release of the proposal. Again EPA has received many comments. Based on the recommendations and comments received, EPA developed the final paper entitled *Final Action Plan: TSCA Confidential Business Information Reform*. The paper is available from the TSCA Hot Line at the location listed under the ADDRESSES unit.

The following are components of the Final Action Plan:

1. Educational efforts.
2. Toxics information dissemination.
3. State programs.
4. Regulatory policy clarifications.
5. CBI review.
6. Industry voluntary information dissemination.
7. Regulatory changes: sunset provisions.
8. Regulatory changes: senior management official signing CBI claims.
9. Regulatory changes: upfront substantiation.

All the comments received in the various stages of the policy development process, various other relevant documents and the transcripts of the public meetings have been incorporated into a public case file. This case file, No. 00125A, is available for inspection in the TSCA Nonconfidential Information Center located at EPA headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC, from 12 noon to 4 p.m., Monday through Friday, excluding holidays.

Dated: June 27, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–16332 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office of Management and Budget For Review

June 28, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission 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 this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0341.

Title: Section 73.1680, Emergency antennas.

Action: Extension of currently approved collection.

Respondents: Non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 140 responses; 1 hour average burden per response; 140 hours total annual burden.

Needs and Uses: Section 73.1680 requires that licensees of AM, FM or TV stations submit an informal request to the FCC (within 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. The data is used by FCC staff to ensure that interference is not caused to other existing stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–16239 Filed 7–5–94; 8:45 am]

BILLING CODE 6712–01–M

[DA 94-694]

Comments Invited on Illinois Public Safety Plan Amendment

June 24, 1994.

On September 30, 1991, the Commission accepted the Public Safety Plan for Illinois (Region 13). On June 6, 1994, Region 13 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 13 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 4, 1994 and reply comments on or before August 19, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submission to PR Docket 91-228 Illinois-Public Safety Region 13.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-16238 Filed 7-5-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Deutsche Bank AG, Frankfurt, Germany; Application to engage in Nonbanking Activities

Deutsche Bank AG, Frankfurt, Germany (Deutsche Bank), has applied pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage in various activities through Deutsche Bank Sharps Pixley, Inc. (DBSPI) and Sharps Pixley Brokers, Inc. ("Brokers"), both of New York, New York, which were acquired indirectly by Deutsche Bank from Kleinwort Benson Group plc, London, England on December 31, 1993. Deutsche Bank proposes to engage in the following activities through DBSPI: (1) trading for its own account for nonhedging purposes in gold, silver and platinum bullion in the spot, forward and over-the-counter (OTC) option markets; and (2) providing various financing services. Deutsche Bank proposes to provide futures commission merchant (FCM) execution and investment advisory services through Brokers, an FCM registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), on the following contracts: Copper Futures, Options on Copper Futures, Gold Futures, Options on Gold Futures, Silver Futures, and Options on Silver Futures on the Commodity Exchange, Inc.; Copper Futures, Options on Copper Futures, Lead Futures, Options on Lead Futures, Zinc Futures, Options on Zinc Futures, Aluminum Futures, Options on Aluminum Futures, Tin Futures, Options on Tin Futures, Nickel Futures, Options on Nickel Futures, Aluminum Alloy Futures, and Options on Aluminum Alloy Futures on The London Metal Exchange, Limited. The activities will be conducted on a world wide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Deutsche Bank states that the Board previously has determined by Regulation that certain of the proposed activities, when conducted within limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of § 4(c)(8) of the BHC Act. See 12 C.F.R. 225.25(b)(1) and Westpac Banking Corporation, 73 Federal Reserve Bulletin 61 (1987) (making, acquiring or servicing loans or other extensions of credit); 12 C.F.R. 225.25(b)(18) and (19) (providing FCM transactional and advisory services with respect to bullion contracts).

Deutsche Bank also maintains that the Board has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in previous orders, are closely related to banking. *See Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990) (trading gold and silver bullion in the spot market for a bank holding company's own account); *J.P. Morgan & Co. Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (providing FCM transactional and advisory services with respect to nonfinancial commodity contracts). Deutsche Bank maintains that DBSPI and Brokers would conduct these previously approved activities in conformity with the conditions and limitations established by the Board in prior cases.

Deutsche Bank further states that the Board previously has not approved trading platinum bullion in the spot market for a bank holding company's own account, or trading gold, silver or platinum bullion in the forward or OTC option market for a bank holding company's own account for nonhedging purposes. With respect to trading gold and silver in the forward and OTC option markets, Deutsche Bank maintains that the Board previously has determined that trading for nonhedging purposes in the proposed derivative contracts with respect to other bank-eligible investments is closely related to banking, and, therefore, that trading these contracts with respect to silver and gold bullion also is closely related to banking. *See Hongkong and Shanghai Banking Corporation*, 75 Federal Reserve Bulletin 217 (1989) (trading foreign exchange for a bank holding company's own account for nonhedging purposes in the spot, forward, options, futures and options on futures markets).

With respect to its proposal that Company trade for its own account in platinum bullion, Deutsche Bank states that the OCC and the New York State Banking Department have approved this activity for banks under their respective jurisdictions. Deutsche Bank also states that the Board has approved under § 4(c)(8) of the BHC Act the purchase and

sale of platinum coins, under limited circumstances. *See Standard Chartered PLC*, 76 Federal Reserve Bulletin 681 (1990). Deutsche Bank also states that the Board has approved, under Regulation K (12 C.F.R. part 211), trading in platinum by bank holding company subsidiaries located outside the United States. *See J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 552 (1990). Deutsche Bank maintains that for these reasons, the proposed trading in platinum bullion is closely related to banking.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by DBSPI and Brokers "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." 12 U.S.C. § 1843(c)(8).

Deutsche Bank believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Deutsche Bank maintains that the proposal will enhance competition and enable Deutsche Bank to offer its customers a broader range of products. In addition, Deutsche Bank states that the proposed activities will not result in the adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 31, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16289 Filed 7–5–94; 8:45 am]

BILLING CODE 6210–01–F

FSB Financial Corporation; 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 July 29, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. FSB Financial Corporation, Francisco, Indiana, to become a bank holding company by acquiring 100 percent of the voting shares of The Francisco State Bank, Francisco, Indiana.

2. Southern Bancshares, Ltd., Carbondale, Illinois to acquire 100 percent of the voting shares of DeSoto Bancshares, Inc., De Soto, Illinois, and thereby indirectly acquire Bank of DeSoto, De Soto, Illinois.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16290 Filed 7–5–94; 8:45 am]

BILLING CODE 6210–01–F

Trans Financial Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky, to engage *de novo*, through indirect nonbank subsidiaries, Tran Financial Service Corporation, Tullahoma, Tennessee and General Service Corporation,

Russellville, Kentucky, in full service securities brokerage activities and in fixed and variable rate annuity sales activities in places where the applicant's thrift subsidiaries have lending offices that have populations not exceeding 5,000, pursuant to §§ 225.25(b)(4) and (15)(ii) and § 225.25(b)(8)(iii) of the Board's Regulation Y. The applicant also plans to engage in riskless principal transactions, which has been approved by Board order. *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989); *Cardinal Bancshares, Inc.*, 80 Federal Reserve Bulletin 447 (1994). Nationwide scope for full service brokerage activities and riskless principal activities. For annuity sales activities, in Auburn, Kentucky, and Mt. Pleasant and Kingston, Tennessee, and any future offices acquired or established by the applicant's thrift subsidiaries that are located in towns with populations not exceeding 5,000.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16291 Filed 7–5–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 941 0019]

The Dow Chemical Company, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Marion Merrell Dow to license its dicyclomine formulations and production technology to a third party, and to contract manufacture dicyclomine for the third party while that party awaits the Food and Drug Administration approval to sell its own dicyclomine. The consent agreement also would prohibit future acquisition of any dicyclomine manufacturing, production or distribution capabilities without prior Commission approval.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester or Claudia Higgins, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the Acquisition of certain stock of Rugby-Darby Group Companies, Inc. ("Rugby") by Marion Merrell Dow Inc. ("MMD"), a subsidiary of The Dow Chemical Company ("Dow") (collectively referred to as "Proposed Respondents"), and it now appearing that Proposed Respondents are willing to enter into an Agreement Containing Consent Order ("Agreement") to license certain assets, contract manufacture dicyclomine tablets and capsules, cease and desist from certain acts, and provide for certain other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed Respondent Dow is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 2030 Dow Center, Midland, Michigan, 48674.

2. Proposed Respondent MMD is a subsidiary of Dow, and is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 9300 Ward Parkway, Kansas City, Missouri, 64114.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to license and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addressed as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the

Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed Respondents have read the proposed Complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Dow" means The Dow Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Dow, and its respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "MMD" means Marion Merrell Dow Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by MMD, and its respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "Rugby" means Rugby Group, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Rugby, and its respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. "Respondents" means Dow and MMD.

E. "Commission" means the Federal Trade Commission.

F. "Acquisition" means the acquisition by Respondents of certain Rugby stock that is the subject of a stock purchase agreement dated October 4, 1993.

G. "Rugby intangible dicyclomine assets" means those assets relating to the manufacture and sale of dicyclomine tablets and capsules acquired in the Acquisition that are not part of Rugby's physical facilities or other tangible assets, including but not limited to all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, quality control data, research materials, technical information, management information systems, software, the Drug Master file, and all information relating to United States Food and Drug Administration ("FDA") approvals.

H. "Potential New Entrant" means the person(s) for whom MMD shall contract manufacture, and to whom MMD shall sell, dicyclomine tablets and capsules and license the Rugby intangible dicyclomine assets. The Potential New Entrant must be a generic or a branded pharmaceutical manufacturer with manufacturing facilities approved by the FDA for the manufacture of generic or branded pharmaceutical products in the United States.

I. "Dicyclomine tablets and capsules" means pharmaceutically acceptable finished tablets and capsules consisting of either 10mg or 20mg of dicyclomine hydrochloride U.S.P. manufactured under an approved New Drug Application ("NDA") or an approved Abbreviated New Drug Application ("ANDA") for sale in the United States and that have received at least an AB rating by the FDA.

J. "Contract manufacture" means the manufacture of an unlimited volume of dicyclomine tablets and capsules by MMD for sale to a Potential New Entrant in finished packaged form suitable for commercial sale in the United States.

K. "Finished packaged form" means packaged in all forms required by the Potential new Entrant so as to optimize sales and distribution of the product, including but not limited to inscribing the name and identification codes of the Potential New Entrant on the packaging of dicyclomine capsules or tablets, and packaging the dicyclomine tablets and capsules in units required by the Potential New Entrant, as permitted by Rugby's existing ANDA.

L. "Formulation" means any and all information, including both patent and trade secret information, technical assistance and advice, relating to the manufacture of dicyclomine tablets and capsules that meet United States Food and Drug Administration approved specifications therefor.

II

It is further ordered that:

A. Within twelve (12) months from the date this Order becomes final, MMD shall enter into an agreement (hereinafter "Agreement"), in good faith:

1. To license to the Potential New Entrant in perpetuity a non-exclusive right to the Rugby intangible dicyclomine assets at no minimum price; and

2. To contract manufacture and deliver in a timely manner the volume of dicyclomine tablets and capsules requested by the Potential New Entrant, at a price not to exceed 48% of the Average Wholesale Price of Rugby's dicyclomine tablets and capsules in effect as of July 2, 1993.

MMD shall enter into such Agreement to license and contract manufacture only with a Potential New Entrant that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission and that is consistent with the purposes of this Order. The purposes of this Order are: (a) to provide the means for establishing an ongoing, viable enterprise to replace the competition in the dicyclomine tablet and capsule market alleged in the Commission's Complaint to have been eliminated by the Acquisition; and (b) to remedy the lessening of competition alleged in the Commission's Complaint to have resulted from the Acquisition.

B. The Agreement shall require the Potential New Entrant to submit to the Commission a certification attesting to the Potential New Entrant's good faith intention and actual plan to obtain FDA approval of its own NDA or ANDA for the manufacture and sale of dicyclomine tablets and capsules in an expedited manner. The Agreement shall terminate in the event that the Potential New Entrant fails to sell or discontinues the sale of contract manufactured dicyclomine tablets and capsules prior to obtaining FDA approval, or abandons its efforts or fails to obtain FDA approval of its own NDA or ANDA for dicyclomine tablets and capsules within seven (7) years from the date the Commission approves the Agreement.

C. The Agreement shall require the Potential New Entrant to submit to the Commission a verified written report setting forth in detail its efforts to sell contract manufactured dicyclomine tablets and capsules and to obtain FDA approvals necessary for manufacturing its own dicyclomine tablets and capsules. The Agreement shall require such report to be submitted one (1) year from the date the Agreement becomes effective and annually thereafter until contract manufacturing ceases. The Agreement shall also require the Potential New Entrant to report to the Commission at least thirty (30) days prior to its discontinuing the sale of contract manufactured dicyclomine tablets and capsules or abandoning its efforts to obtain FDA approvals necessary for manufacturing its own dicyclomine tablets and capsules.

D. MMD shall deliver dicyclomine tablets and capsules to the Potential New Entrant within two (2) months from the date the Commission approves the Potential New Entrant and the Agreement. The Potential New Entrant shall have the right to continue to purchase dicyclomine tablets and

capsules from MMD pursuant to the Agreement until six (6) months after the date that the Potential New Entrant obtains FDA approval of its own NDA or ANDA for the manufacture and sale of dicyclomine tablets and capsules in the United States.

E. MMD shall make representations and warranties to the Potential New Entrant that the contract manufactured dicyclomine tablets and capsules meet the United States Food and Drug Administration approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* MMD shall agree to indemnify, defend and hold the Potential New Entrant harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the manufactured dicyclomine tablets and capsules to meet the specifications. This obligation shall be contingent upon the Potential New Entrant giving MMD prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting MMD to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require MMD to be liable for any negligent act or omission of the Potential New Entrant or for any representations and warranties, express or implied, made by the Potential New Entrant that exceed the representations and warranties made by MMD to the Potential New Entrant.

F. Upon reasonable notice from and at the option of the Potential New Entrant, MMD shall provide information, technical assistance and advice sufficient to assist the Potential New Entrant in obtaining FDA approval for the manufacture and sale of dicyclomine tablets and capsules. Such assistance shall include reasonable consultation with knowledgeable employees of MMD and training at the Potential New Entrant's facility for a period of time sufficient to satisfy the Potential New Entrant's management that its personnel are appropriately trained in the manufacture of dicyclomine tablets and capsules.

G. While the obligations imposed by Paragraphs II.A, II.D or Paragraph III of this Order are in effect, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Rugby intangible dicyclomine assets and the tangible assets needed to contract manufacture and sell dicyclomine tablets and capsules and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Rugby intangible and tangible assets relating to the manufacture of dicyclomine tablets and capsules except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Rugby intangible and tangible assets.

III

It is further ordered that:

A. MMD shall consent to the appointment of a trustee by the Commission to terminate MMD's prior Agreement, if any, and to enter into a new Agreement on behalf of MMD with a Potential New Entrant selected by the trustee if:

1. MMD has not entered into an Agreement to contract manufacture dicyclomine tablets and capsules and to license the Rugby intangible dicyclomine assets to a Potential New Entrant within twelve (12) months as provided for in Paragraph II of this Order; or

2. The Potential New Entrant terminates the Agreement to contract manufacturer, fails to sell, or discontinues the sale of contract manufactured dicylomine tablets and capsules in the United States prior to obtaining FDA approval of its own NDA and ANDA for the manufacture and sale of dicyclomine tablets and capsules; or

3. The Potential New Entrant abandons its efforts or fails to obtain FDA approval of it own NDA or ANDA for diclyclomine tablets and capsules within seven (7) years from the date the Commission approves the Agreement.

In the event the Commission or the Attorney General brings an action against Respondents to enforce this order pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. section 45(*l*), or any other statute enforced by the Commission, MMD shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this Order, MMD shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of MMD, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If MMD has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to MMD of the identity of any proposed trustee, MMD shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to enter into an Agreement as specified in Paragraph II of this Order.

3. Within ten (10) days after appointment of the trustee, MMD shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to enter into the Agreement required by Paragraph II of this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3 to terminate any prior Agreement and to enter into the Agreement specified in Paragraph II of this Order, which Agreement shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period the trustee has submitted a plan or believes that the Agreement required by Paragraph II of this Order can be entered into within a reasonable time, the twelve (12) month period may be extended by the Commission or, in the case of a court-appointed trustee, by the court; *provided*, however, the Commission my extend the twelve (12) month period only two (2) time and for no longer than twelve (12) months each time.

5. The trustees shall have full and complete access to the personnel, books, records, facilities and technical information related to the manufacture of dicyclomine tablets and capsules and to the Rugby intangible dicyclomine assets, or to any other relevant information, as the trustee may reasonably request. Respondents shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's ability to enter into the Agreement required by Paragraph II of this Order. Any delays in entering into the Agreement required by Paragraph II of this Order caused by Respondents shall extend the time under Paragraph III.B.4 for entering into the Agreement required by Paragraph II of this Order in an amount equal to the delay, as determined by the Commission or, for the court-appointed trustee by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to MMD's absolute and unconditional obligation to enter into the Agreement required by Paragraph II of this Order at no minimum price. The Agreement shall be made in the manner and with a Potential New Entrant as set out in Paragraph II of this Order; *provided,* however, if the trustee receives bona fide offers from more than one Potential New Entrant, and if the Commission determines to approve more than one such Potential New Entrant, the trustee shall enter into an Agreement as required by Paragraph II of this Order with the Potential New Entrant selected by MMD from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of MMD, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of MMD, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the Agreement required by Paragraph II of this Order and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of MMD and the trustee's power shall be terminated.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to enter into the Agreement required by Paragraph II of this Order.

11. The trustee shall report in writing to MMD and to the Commission every sixty (60) days concerning the trustee's efforts to enter into the Agreement required by Paragraph II of this Order.

IV

It is further ordered that for a period of ten (10) years from the date this Order becomes final, Respondents shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

(a) Any stock, share capital, equity, leasehold or other interest in any concern, corporate or non-corporate, presently engaged in, or within the two years preceding such acquisition engaged in, the manufacture, production, distribution or sale of dicyclomine tablets and capsules in the United States; or

(b) Any assets currently used for or previously used for (and still suitable for use for) the manufacture and production of dicyclomine tablets and capsules in the United States from any concern, corporate or noncorporate, presently engaged in, or within the two years preceding the acquisition engaged in the manufacture, production, distribution or sale of dicyclomine tablets and capsules in the United States.

Provided, however, that the obligations imposed by this Paragraph shall not terminate while the obligations of Paragraphs II or III are in effect.

V

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until the Commission has approved a Potential New Entrant, MMD shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Paragraphs II and III of the Order. MMD shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for entering into the Agreement required by this Order, including the identity of all parties contacted. MMD shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Agreement required by Paragraph II of this Order.

B. One (1) year from the date this Order becomes final and annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs II, III and IV of this Order.

Provided, however, that the obligations imposed by this Paragraph shall not terminate while the obligations of Paragraphs II or III are in effect.

VI

It is further ordered that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered that either Respondent shall notify the Commission at least thirty (30) days prior to any change in either Respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from The Dow Chemical Company ("Dow") and Marion Merrell Dow Inc. ("MMD"), a subsidiary of Dow, under which MMD would be required to manufacture and supply the drug dicyclomine for a potential new entrant and to provide the dicyclomine formulation and other

intangible assets to expedite that potential new entrant's entry as a manufacturer into the dicyclomine market. In addition, under the proposed Consent Order the potential new entrant would be required to certify its good faith intention to manufacture dicyclomine.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On October 4, 1993, MMD and Rugby-Darby Group Companies, Inc. ("Rugby") signed an agreement whereby MMD acquired all of the stock of Rugby's generic pharmaceutical business. The proposed compliant alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for dicyclomine hydrochloride capsules and tablets in the United States.

The proposed Consent Order would remedy the alleged violation by establishing a new entrant into the U.S. market for dicyclomine capsules and tablets to replace the competition lost as a result of the acquisition. The proposed Consent Order would require MMD to enter into an agreement with a potential new entrant within twelve (12) months from the date the proposed Consent Order becomes final.

The agreement would require MMD to manufacture and supply dicyclomine, as well as to license the relevant dicyclomine technology, to a Commission approved potential new entrant. MMD must continue to supply the potential new entrant with dicyclomine until the potential new entrant has begun manufacturing dicyclomine with FDA approval, or for seven (7) years, whichever is shorter. The price at which MMD may contract to supply dicyclomine to the potential new entrant may not exceed 48 percent of the Average Wholesale Price charged by Rugby as of July 2, 1993. The potential new entrant must certify its good faith intention and actual plan to obtain FDA approval to manufacture dicyclomine capsules and tablets for sale in the U.S. In the event that MMD fails to enter into such an agreement with a potential new entrant, or that the potential new entrant discontinues or fails in its efforts to obtain FDA approval to manufacture dicyclomine within seven (7) years, the proposed Consent Order provides that MMD shall consent to the appointment of a trustee by the Commission. The trustee will be responsible for locating a potential new entrant that will obtain the necessary approvals and sell dicyclomine into the U.S. market.

The proposed Order will also prohibit for a period of ten (10) years, Dow and MMD from acquiring any interest in assets used for the development, manufacture or sale of dicyclomine without prior approval from the Commission. The proposed Order will also require MMD to provide to the Commission a report of its compliance with the provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until the Commission has approved a potential new entrant.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Dow and MMD will be required to provide to the Commission a report of their compliance with the Consent Order. The Consent Order also requires Dow or MMD to notify the Commission at least thirty (30) days prior to any change in the structure of Dow or MMD resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga

In *The Dow Chemical Company*, File No. 941–0019

Today, the Commission accepts for comment a consent agreement settling charges that Marion Merrell Dow's consummated acquisition of certain stock in the Rugby-Darby Group Companies, Inc. would substantially lessen competition in the United States market for dicyclomine hydrochloride capsules and tablets. I support the allegations in the complaint that the acquisition created a monopoly in the manufacture and sale of dicyclomine hydrochloride capsules and tablets, and I have reason to believe the acquisition violated the law. I dissent because I find the remedy insufficient. Ideally, the Commission would have sought to enjoin the transaction. Although it did not seek a preliminary injunction, the Commission still should seek through administrative litigation divestiture of assets sufficient to create a viable, independent dicyclomine business. Administrative litigation takes time but affords a much higher likelihood of obtaining effective relief by divestiture of an ongoing enterprise than does a technology license designed to induce new entry.

The order requires Marion Merrell Dow to grant a nonexclusive license to certain intangible dicyclomine assets, including patents and technology, and for up to seven years to sell to the person acquiring the license dicyclomine tablets and capsules at a price not exceeding 48 percent of the average wholesale price on July 2, 1993. Technology licenses tend to be highly regulatory and less effective than divestitures in restoring competition. Further, because of the great difficulty government agencies have in specifying competitive market prices, it is highly questionable whether requiring sales of dicyclomine at a Commission-specified maximum price will provide consumers with interim relief from the monopoly. Indeed, since the Commission granted early termination of the Hart-Scott-Rodino waiting period on July 12, 1993, it seems entirely possible that the price on July 2 reflected the impending merger to monopoly and was already supra-competitive.

Concurring Statement of Commissioner Deborah K. Owen on Proposed Consent Agreement With Marion Merrell Dow Inc., File No. 941–0019

The Commission is accepting for public comment a proposed consent agreement with Marion Merrell Dow Inc. ("MMD"), the manufacturer of Bentyl, a drug commonly prescribed for the treatment of certain gastrointestinal disorders. In October 1993, MMD acquired Rugby-Darby Group Companies, Inc. ("Rugby"), a manufacturer of numerous pharmaceutical products, including a generic version of Bentyl: dicyclomine hydrochloride. The proposed complaint alleges, *inter alia*, that this acquisition "created a monopoly in the manufacture of dicyclomine hydrochloride capsules and tablets." Complaint ¶ VIII(c). I am writing separately in order to explain one aspect of my analysis of this case, and to raise some questions concerning the proposed remedy.

A threshold issue in analyzing this merger is whether MMD's Bentyl and Rugby's generic dicyclomine are in the same product market. On the one hand, it may seem obvious that two drugs deemed to be bio-equivalent by the Food and Drug Administration, must be in the same relevant product market. On the other hand, branded drugs and their generic counterparts typically vary

dramatically in price, suggesting that consumers may not view the products as equivalent or interchangeable.

As indicated in the Merger Guidelines, the Commission approaches the issue of market definition by asking what products, if any, constrained the price of MMD's Bentyl (and Rugby's generic dicyclomine) at the time of the merger. If, in response to a small but significant increase in the price of Bentyl, enough customers would switch to generic dicyclomine (or, if in response to a small but significant increase in the price of generic dicyclomine, enough customers would switch to Bentyl) to make the price increase unprofitable, then the two products are deemed to be in the same market. Whether a particular branded drug and any generic versions are in the same market may vary over time, and depends in part upon their relative prices at the time of the merger. In general, where the price differential between the branded product and the generic product is great, the products are more likely to be in separate markets.[1] Conversely, where the price gap between the branded product and the generic product is relatively small (for example, where there is only one generic version available to consumers), the products are more likely to be in the same market.

The proposed consent agreement aims to establish a new competitor in the U.S. dicyclomine market to replace the competition lost as a result of MMD's allegedly illegal acquisition. Specifically, MMD is required to license certain dicyclomine production technology to a Commission-approved licensee that avows a good faith intention to obtain FDA approval to independently manufacture dicyclomine for sale in the United States. Further, MMD must supply dicyclomine to the potential new entrant for up to seven years, until such time as the licensee has begun manufacturing dicyclomine on its own.

I am concerned about the terms of this Commission-mandated supply agreement. The proposed consent order provides that the price at which MMD may contract to supply dicyclomine to the potential entrant may not exceed 48 percent of the average wholesale price charged by Rugby as of July 2, 1993.[2] This is in effect a form of government price regulation, and is apt to result in a significant misallocation of resources. It is particularly troubling that the maximum transfer price is fixed by the Commission's order for up to seven years, and (unlike market-based prices) does not vary with either changes in demand or changes in the costs of production. If the costs of production come to exceed the transfer price, then the licensee may have an incentive to delay the opening of its own production facility, and hence delay the return of true, market-based competition.

Furthermore, the fixed transfer price may actually be in effect for longer than seven years. For example, if the original licensee fails after seven years to obtain FDA approval, then a replacement licensee may be selected by a trustee. This second licensee is entitled to purchase dicyclomine from MMD at the same fixed price. Given the Commission's recent experience in the *Institut Merieux* (File No. C–3301) and *Promodes* (Docket No. 9228) matters, the prospect of another seemingly interminable and complicated compliance proceeding disturbs me.

I hope that during the public comment period the Commission will receive advice on the wisdom and workability of the proposed supply agreement. In particular, I am interested in considering alternate ways of structuring the price term. Is there a practical way, under a revised order, to permit the price term to vary should the costs of production or demand vary?[3] Or would the uncertainties of future cost and demand changes be better accomodated if MMD and the licensee were free to negotiate a price term (perhaps subject to Commission approval)? Finally, what is the optimal duration for the supply agreement? Specifically, how long should it take a licensee, acting diligently, to obtain required FDA approvals and commence manufacturing dicyclomine? At this time, I am not confident that the appropriate maximum duration for the MMD supply agreement should be as long as seven years. Public comment on these issues may be of significant value to the Commission not only in this matter, but more generally as the agency seeks to devise effective antitrust remedies for the pharmaceutical, and other industries.

[1] This price differential may be greatest where there is intense price competition among different generic versions of a drug. In this situation, the branded drug may not serve as a significant constraint on the price of the generic versions; that is, a five or ten percent increase in the (very low) price of the generic drugs would not be defeated by sales lost to the (much higher priced) branded drug. And in this situation, the next best substitute for the branded drug (from the perspective of those consumers who are uninterested in low priced generics) may be another branded drug. Under the Merger Guidelines, the branded and generic drugs may then be viewed as occupying separate product markets.

[2] My view, based upon the evidence assembled during this investigation, is that the July 2, 1993 price did not reflect the exercise of any market power gained as a result of the then impending MMD/Rugby transaction, but reflected other factors.

[3] Would it be desirable to use the producer price index or some other index as a proxy for the costs of production?

Statement of Commissioner Dennis A. Yao

In *The Dow Chemical Company*, File No. 941 0019

I voted to accept for public comment the proposed consent agreement in this matter because I believe it represents a viable solution to the potential anticompetitive effects that resulted from Marion Merrell Dow's ("MMD") acquisition of Rugby Holding, Inc. ("Rugby"). The acquisition created a monopoly in the market for dicyclomine tablets and capsules by combining the only two manufacturers of the branded and generic product. The proposed consent has the potential of establishing a second competitor through the grant of a nonexclusive license by MMD of certain intangible dicyclomine assets. The order also sets a maximum price at which MMD is allowed to sell dicyclomine tablets and capsules to the licensee for up to seven years. The goal is to replace the competition lost from the dicyclomine market as quickly as possible by establishing a new entrant in the market. The order is the best mechanism to provide quick relief.

The order sets a ceiling of 48% of the average wholesale price on July 2, 1993, as the maximum price at which MMD is allowed to sell dicyclomine tablet and capsules to the licensee. The July 2, 1993, wholesale price offers the best available approximation of the price that would exist in a market consisting of only one manufacturer of the branded and one manufacturer of the generic product. The 48% is based on our best approximation of the margin that a generic distributor of another manufacturer's product needs to make a profit. Furthermore, the July 2 price is the firs price increase that reflected the exit of two generic competitors. The timing of the merger announcement and the price increase could suggest that the price on July 2nd were also influenced by the impending merger; however there is no evidence of this. If the ceiling is higher than one would prefer, the licensee and licensor could conceivably arrive at a transfer price that somewhat reduces their incentives to fully compete. Unfortunately, there is no other non-arbitrary method for setting the maximum allowable price, nor would it be easy to determine such a price. The provision, however, does serve the basic purpose of providing the licensee a chance to succeed without

injecting a regulator's version of competition into the market.[1]

I have a mild concern that the licensee will not have sufficient incentives to begin manufacturing dicyclomine on its own under the order. A potential licensee could enter the licensing agreement for a short period of time with the intention of taking advantage of the profit available for selling the licensed product but without the intention of manufacturing dicyclomine on its own. Alternatively, a licensee might initially intend to elf-manufacture, but change its strategy at some later date and sell only the licensed product.[2] In this particular instance, no reasonable fixes to the licensee incentive problem seem available. Therefore, on balance, I support the order because, at a minimum, it should achieve the necessary intermediate relief. Permanent relief, such as divestiture, may not be as needed in this instance because there is a good possibility of future entry, albeit untimely.

[FR Doc. 94–16279 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3115]

Macy's Northeast, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the New York-based retail department store subsidiaries to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc. ("proposed respondents" or "respondents", corporations, and wholly-owned subsidiaries of R.H. Macy & Co., Inc., a Delaware corporation, and it is now appearing that proposed respondents are will to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc., by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Macy's Northeast, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 151 W 34th Street, New York, New York 10001.

Proposed respondent Macy's South, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 151 W. 34th Street, New York, New York 10001.

Proposed respondent Macy's California, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 O'Farrell Street, San Francisco, California 94102.

Proposed respondent Bullock's Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 O'Farrell Street, San Francisco, California 94102.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of

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[1] I think indexing for inflation might have been more appropriate given the seven year period over which the ceiling would be in effect.

[2] Such a change of strategy could come about because of the entry of others, or by unanticipated problems associated with gaining FDA approval, or self-manufacturing.

the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully compiled with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in rule 702, 16 C.F.R. § 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondents Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc., corporations, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager and assistant or operations manager engaged in the sale of consumer products on behalf of respondents, a copy of this Order to cease and desist.

III

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, instruct all current retail store managers and assistant or operations managers engaged in the sale of consumer products on behalf of respondents as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondents shall, for a period of not less than four (4) years from the date of service of this order, instruct all future retail store managers and assistant or operations managers who will be engaged in the sale of consumer products on behalf of respondents, before they assume said responsibilities for respondents, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct their sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondents shall, for a period of not less than five (5) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondents to their retail store managers and assistant and operations managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order; (ii) copies of signs posted by respondents in their retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondents' retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondents, for a period of six (6) years from the date of service of this Order, shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondents shall, within ninety (90) days after service of this Order on them, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc. ("proposed respondents"), wholly-owned subsidiaries of R.H. Macy & Co., Inc. Proposed respondents operate department stores in New York, California, and a number of other states.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The complaint alleges that the proposed respondents have violated a Rule promulgated by the Federal Trade Commission (16 CFR 702.3(a)) pursuant to the Magnuson-Moss Consumer Warranty Act (15 U.S.C. 2301). This Rule requires the proposed respondents to make manufacturers' warranty information available to consumers. The purposes of this Act, and the Rule, are to improve the information available to consumers, to prevent deception, and to promote competition, in the marketing of consumer product warranties offered by manufacturers.

The Rule, called the "Pre-Sale Availability Rule," gives retailers the option of either (1) displaying the text of manufacturers' warranties in close proximity to the product display; or (2) furnishing the text of manufacturers' warranties to customers upon request, and prominently displaying signs advising of the availability of such warranties. The complaint alleges that the proposed respondents have not complied with either of these options.

The proposed order requires proposed respondents to comply with this Rule, to inform their retail store executives of their compliance responsibilities, and to develop a program for instructing their sales personnel about the availability and location of manufacturers' warranty

information. Proposed respondents will be subject to civil penalties if they do not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–16277 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3116]

Montgomery Ward & Co., Incorporated; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform its retail store managers of their compliance responsibilities, and to develop and implement a program for instructing its sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public accord for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of Montgomery Ward & Co., Incorporated, a corporation ("proposed respondent" or "respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Montgomery Ward & Co., Incorporated, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Montgomery Ward & Co., Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at One Montgomery Ward Plaza, Chicago, Illinois 60671.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission,and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondent Montgomery Ward & Co., Incorporated, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15 readily available for examination by prospective buyers prior to sale through utilization

of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager engaged in the sale of consumer products on behalf of respondent, a copy of this Order to cease and desist.

III

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, instruct all current retail store managers engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondent shall, for a period of not less than four (4) years from the date of service of this order, instruct all future retail store managers who will be engaged in the sale of consumer products on behalf of respondent, before they assume said responsibilities for respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondent shall, for a period of not less than five (5) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its retail store managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order; (ii) copies of signs posted by respondent in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondent's retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondent, for a period of six (6) years from the date of service of this Order, shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Montgomery Ward & Co., Incorporated, Chicago, Illinois ("Wards"). Wards is a national chain of retail department stores, and of specialty stores selling appliances and consumer electronics.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The complaint alleges that Wards has violated a Rule promulgated by the Federal Trade Commission (16 CFR 702.3(a)) pursuant to the Magnuson-Moss Consumer Warranty Act (15 U.S.C. § 2301). This Rule requires Wards to maker manufacturers' warranty information available to consumers. The purposes of this Act, and the Rule, are to improve the information available to consumers, to prevent deception, and to promote competition, in the marketing of consumer product warranties offered by manufacturers.

The Rule, called the "Pre-Sale Availability Rule," gives retailers the option of either 1) displaying the text of manufacturers' warranties in close proximity to the product display; or 2) furnishing the text of manufacturers' warranties to customers upon request, and prominently displaying signs advising of the availability of such warranties. The complaint alleges that Wards has not complied with either of these options.

The proposed order requires Wards to comply with this Rule, to inform its retail store executives of their compliance responsibilities, and to develop a program for instructing its sales personnel about the availability and location of manufacturers' warranty information. Wards will be subject to civil penalties if it does not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–16276 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3117]

Sears, Roebuck and Co.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform its retail store managers of their compliance responsibilities, and to develop and implement a program for instructing its sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of Sears, Roebuck and Co., a corporation ("proposed respondent" or "respondent"), and it now appearing that proposed respondent is wiling to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Sears, Roebuck and Co., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sears, Roebuck and Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 333 Beverly Road, Hoffman Estates, Illinois 60179.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondent Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager engaged in the sale of consumer products on behalf of respondent, a copy of this Order to cease and desist.

III

It is further ordered that respondent shall, within thirty (30) days of the date of service of this order, instruct all current retail store managers engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondent shall, for a period of not less than four (4) years from the date of service of this Order, instruct all future retail store managers who will be engaged in the sale of consumer products on behalf of respondent, before they assume said responsibilities for respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondent shall, for a period of not less than five (5) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its retail store managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order; (ii) copies of signs posted by respondent in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and

(iii) copies of the text of written warranties made readily available by respondent's retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondent, for a period of six (6) years from the date of service of this Order, shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Sears, Roebuck & Co., Hoffman Estates, Illinois ("Sears"). Sears is a national chain of retail department stores.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The complaint alleges that Sears has violated a Rule promulgated by the Federal Trade Commission (16 CFR 702.3(a)) pursuant to the Magnuson-Moss Consumer Warranty Act (15 U.S.C. § 2301). This Rule requires Sears to make manufacturers' warranty information available to consumers. The purposes of this Act, and the Rule, are to improve the information available to consumers, to prevent deception, and to promote competition, in the marketing of consumer product warranties offered by manufacturers.

The Rule, called the "Pre-Sale Availability Rule," gives retailers the option of either (1) displaying the text of manufacturers' warranties in close proximity to the product display; or (2) furnishing the text of manufacturers' warranties to customers upon request, and prominently displaying signs advising of the availability of such warranties. The complaint alleges that Sears has not complied with either of these options.

The proposed order requires Sears to comply with this Rule, to inform its retail store executives of their compliance responsibilities, and to develop a program for instructing its sales personnel about the availability and location of manufacturers' warranty information. Sears will be subject to civil penalties if it does not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–16275 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, July 21, 1994 from 9:00 a.m. to 4:00 p.m. in room 7C13 (old number 7313) of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Physical Property and Land issues, (2) Stewardship-Future Claims issues, and (3) other Stewardship issues as time permits.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: June 30, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–16316 Filed 7–5–94; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Intent to Prepare an Environmental Impact Statement U.S. Courthouse—Cleveland, OH

AGENCY: U.S. General Services Administration.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The General Services Administration (GSA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for the construction of a new U.S. Courthouse in Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Ms. Marcy Sherrill, General Services Administration, Region V, 230 S. Dearborn St, Room 3670, Chicago, IL 60604, 312–886–5574.

SUPPLEMENTARY INFORMATION: The General Services Administration proposes to acquire a site and develop a new U.S. Courthouse consisting of approximately 800,000 gross square feet. The new facility will consolidate the district court and court-related agencies which are currently housed in six different Government-owned and leased locations. Although the proposed building will initially accommodate the projected 10-year space requirements of the courts, the site to be acquired will be of sufficient size to allow for its expansion beyond that timeframe.

The existing U.S. Courthouse in Cleveland was constructed in 1910 and is listed on the National Register of Historic Places. It contains a gross area of approximately 250,000 square feet and currently houses the district court, the bankruptcy court and the U.S. court of appeals. Due to the significant expansion of the recent years, several court-related tenants have been relocated into approximately 127,000 square feet of leased space. The proposed new courthouse will, with the exception of two senior district judges, consolidate the entire direct court family and related agencies in one building. The existing U.S. Courthouse will be retained, and will house two senior district judges and the bankruptcy court. The EIS will evaluate alternative sites for the proposed

facility, as well as the no-build alternative. The EIS will also evaluate impacts on the affected environment for resource areas including geology and soils, air and noise quality, cultural resources, land us, community services, traffic and transportation, hazardous materials, economics and aesthetics

Public Scoping Meeting

To ensure that the full range of issues relating to the proposed project are addressed and all potential significant issues are identified, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held at 5:30 PM, Wednesday, July 13, 1994, at the A.J. Celebrezze Federal Building, 1240 E. Ninth Street, Room B–1 (basement level), Cleveland, Ohio. Both written and oral comments will be accepted at that time.

Written comments may be mailed to the GSA contact person through July 29, 1994.

Issued in Chicago, Illinois on June 23, 1994.

William C. Burke,

Regional Administrator, GSA Region V.

[FR Doc. 94–16249 Filed 7–5–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cooperative Research and Development Agreement

[CRADA 94–001]

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) for the further development, refinement, and validation of three interrelated technologies: (1) The Exchangeable Template Reaction (ETR), a method to assemble synthetic genes, (2) the construction of hepatitis C virus (HCV) specific "mosaic" proteins composed of immunodominant antigenic epitopes, and (3) differential HCV diagnostic tests. It is anticipated that these and any new technologies or inventions which may arise from this CRADA will be licensed to the collaborator with whom the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT: Technical: Howard A. Fields, Ph.D., Hepatitis Branch, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–14, Atlanta, GA 30333, telephone (404) 639–2335.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–3227.

SUPPLEMENTARY INFORMATION: The goal of this CRADA is to bring to market HCV-specific technologies that will improve public health. CDC will provide intellectual insight and experimental design protocols to: (1) Improve the efficiency of ETR, (2) construct "mosaic" proteins for HCV that have immunodiagnostic and potential vaccine relevance, and (3) evaluate synthetic peptides containing antigenic epitopes as reagents to discriminate recent from late infections or that may predict outcome of HCV infection. CDC will design and conduct feasibility experiments for each of the project areas and will contribute in the preparation of serologic panels to validate various test formats. The CRADA partner will prepare all synthetic peptides and oligonucleotides as necessary for each project area, prepare monospecific and monoclonal antibodies whenever appropriate, and purify antigens from recombinant lysates as needed. The collaborator will utilize its expertise in market research to evaluate the commercialization of the technologies.

Respondents should provide evidence of expertise in the development and evaluation of diagnostic assays, evidence of experience in commercialization of diagnostics products, and supporting data (e.g., publications, proficiency testing, certifications, resumes, etc.) of qualifications for the principle investigator who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC.

Applicant submissions will be judged according to the following criteria:

1. Expertise in diagnostic virolgoy;
2. Evidence of scientific credibility;
3. Evidence of commitment and ability to develop innovative designs for diagnostic assays and/or vaccines;
4. Evidence of preparing synthetic peptides and oligonucleotides;
5. Evidence of a strong engineering department to design automated equipment; and,
6. Evidence of an existing infrastructure to commercialize on successful technologies.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act, Public Law 99–502 (15 U.S.C. 3710).

The responses must be made to: Lisa Blake-Despigna, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16281 Filed 7–5–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement No. 473]

Cooperative Agreement for Laboratory Medicine Sentinel Monitoring Network

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for up to three cooperative agreements to become part of the Laboratory Medicine Sentinel Monitoring Network. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section

"WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under section 317 (k)(3) [42 U.S.C. 247b(k)(3)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligibility is limited to nonprofit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, and State and local health departments or their bona fide agents, are eligible for these cooperative agreements.

We are limiting eligibility to non-profit organizations to provide assistance to those organizations and to implement long term laboratory medicine monitoring programs.

Availability of Funds

Approximately $250,000 will be available in FY 1994 to fund three cooperative agreements. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these cooperative agreements is to develop data collection networks and to provide information about the practice of laboratory medicine in hospital, physician office and independent laboratories. This cooperative agreement will ultimately improve patient care by improving the quality of clinical laboratory medicine and increase the availability of laboratory monitoring networks.

Program Requirements

In conducting the activities to achieve the purpose of the program, the recipients will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for those activities under B. (CDC Activities).

A. Recipient Activities

1. Solicit laboratories to voluntarily participate in the Monitoring Networks so that sufficient representatives of each laboratory type (hospital, physician office, and independent) participate in the total network by the end of the first year of operation.

2. Provide leadership in the design and evaluation of questionnaires for periodic reporting of laboratory operational characteristics and problems, especially those that impact patient care and on methods that are used by the network participants during the period of the study. Topics investigated by the questionnaires and the time period of monitoring may change during the cooperative agreement by mutual consent of both network participants and CDC. The actual monitoring areas will be decided after the award of the cooperative agreement(s) and may differ for each of the laboratory groups.

The questionnaires should also capture information that determines the effectiveness of actions being taken by participants to improve the practice of laboratory medicine.

3. Provide leadership in collecting and sharing raw data both within the network and with CDC. Participant identification information may be omitted from these data sets if the network manager(s) is able to respond to questions concerning the validity of entered data without providing participant identification information.

4. Periodically send the developed questionnaires to network participants for them to gather and submit the response data back. The network manager will then enter, analyze, and summarize the data for the participants in a statistically valid manner.

5. Prepare manuscripts for peer-review publications, as appropriate, that describe the results of one or more of the activities listed above. Manuscripts should benefit the public good. All manuscripts would note the nature of the funding for the project.

B. CDC Activities

1. Collaborate with the network in identifying those areas of Laboratory Medicine that have Public Health concerns.

2. Provide technical assistance with questionnaire development, data gathering devices, statistical analysis, and writing summaries of the results.

3. Collaborate in the development of a mutually defined data set standard for transmission of raw data.

4. Assist with presentations (including visuals, materials, etc.,) of any delivered data at professional forums. CDC staff may also assist in the presentation of material derived from these cooperative agreements.

5. Provide technical assistance in the preparation of manuscripts related to the activities in this project.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: a) applicant's understanding of the objectives of the proposed cooperative agreement; and b) the relevance of the proposal to the stated objectives. (20 points)

2. Ability to provide staff, knowledge, and other resources required to perform the applicant's responsibilities in this project. The qualifications and time allocations of key personnel to be assigned to this project and the facilities, equipment, and other resources available for performance of this project. (30 points)

3. The methods to be used in carrying out the responsibilities of this project, including the ability to provide the representative participants in the laboratory group or groups they will monitor. Steps to be taken in the planning and implementation of this project. (30 points)

4. Schedule for accomplishing the activities to be carried out in this project and methods for evaluating the accomplishments. (20 points)

5. The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the Laboratory Medicine Sentinel Monitoring Network will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (revised 7/92, OMB Control Number 0937–0189) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, Georgia 30305, on or before August 26, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A pre-proposal conference will be held to answer any questions needed to clarify the activities of the Sentinel Monitoring Network and to disseminate background data that may offer further into the size and complexity of the project, as well as the risks of undertaking the project. That conference will be held at Division of Laboratory Systems Conference Room, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Building 102, Atlanta, Georgia 30341 on July 28, 1994, from 1:00–4:00 PM.

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Bernice A. Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, Georgia 30305, telephone (404) 842–6802. Programmatic technical assistance may be obtained from Dr. Steven J. Steindel, Supervisory Health Scientist, Division of Laboratory Systems, Public Health Practice Program Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop G–23, Atlanta, Georgia 30341, telephone (404) 488–7680.

Please refer to Announcement Number 473 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16282 Filed 7–5–94; 8:45 am]

BILLING CODE 4163–18–P

Control of Occupational Exposures During Construction: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Control of Occupational Exposures during Construction.

Time and date: 1 p.m.–4 p.m., July 14, 1994.

Place: Alice Hamilton Laboratory, Conference Room A. NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this open meeting is to review and discuss a NIOSH project entitled, "Control of Occupational Exposures during Construction." Peer reviewers will give their individual review comments and suggestions regarding the scope of the study. Historically, many exposures related to construction have gone unquantified and uncontrolled. The objective of this project is to provide the construction industry with information concerning practical, effective engineering controls and work methods which minimize worker exposures to process-generated air contaminants. The initial phases of this project will focus on drywall sanding and roofing kettles. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Kenneth R. Mead, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R5, Cincinnati, Ohio 45226, telephone 513/841–4221.

Dated: June 29, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16280 Filed 7–5–94; 8:45 am]

BILLING CODE 4163–19–M

National Institutes of Health

Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub L. 92–463, 86 Stat. 770–776] and Section 402(b)(6), of the Public Health Service Act, as amended [42 U.S.C. 282(b)(6)], the Director, National Institutes of Health (NIH), announces the establishment of the Board of Scientific Counselors, National Center for Human Genome Research.

The Board shall advise the Director, NIH; the Deputy Director for Intramural Research, NIH; the Director, National Center for Human Genome Research (NCHGR); and the Scientific Director, NCHGR, concerning the Center's intramural research through periodic visits to the laboratories to assess the research in progress, the proposed research, and the productivity and performance of staff scientists.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: June 27, 1994.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 94–16254 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the advisory committees of the National Cancer Institute.

The entire meeting for each committee listed below will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. 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. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will

provide summaries of the meetings and rosters of the committee members, upon request.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

Committee Name: Cancer Clinical Investigation Review Committee.

Scientific Review Administrator: Dr. John Meyer, Room 611C, Executive Plaza North, Telephone: (301) 496–7721.

Meeting Date and Time: July 26, 1994, 7 am—recess, July 27, 1994, 7 am—adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Committee Name: Comprehensiveness Subcommittee of the Cancer Center Support Review Committee.

Scientific Review Administrator: Dr. Mary C. Fletcher, Room 643C, Executive Plaza North, Telephone: (301) 496–7929.

Meeting Date and Time: August 4, 1994, 1 pm—5 pm

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Committee Name: Cancer Center Support Review Committee.

Scientific Review Administrator: Dr. David E. Maslow, Room 643A, Executive Plaza North, Telephone: (301) 496–2330.

Meeting Date and Time: August 4, 1994, 7 pm—recess, August 5, 1994, 7:30 am—adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16258 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Cancer Institute.

Both meetings will be open to the public. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed in advance of the meetings.

Committee Name: Clinical Investigations Task Force, National Cancer Advisory Board.

Executive Secretary: Dr. Bruce Chabner, Building 31, Room 3A52, Bethesda, MD 20892; (301) 496–4291.

Meeting Date and Time: July 26, 1994 1 pm to 5 pm.

Place: Executive Plaza North, Conference Room J, 6130 Executive Blvd., Rockville, MD 20852.

Agenda: Discussion will address clinical trials research with cooperative groups funded by the National Cancer Institute.

Committee Name: Subcommittee on Activities and Agenda, National Cancer Advisory Board.

Executive Secretary: Dr. Marvin R. Kalt, EPN, Room 600, Bethesda, MD 20892; (301) 496–5147.

Meeting Date and Time: July 27, 1994 8 am to adjournment.

Place: Executive Plaza North, Conference Room G, 6130 Executive Blvd., Rockville, MD 20852.

Agenda: Discussion of Board's format, potential future agenda items and activities of the National Cancer Advisory Board.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meetings and a roster of members, upon request.

Substantive program information may be obtained from the Executive Secretary.

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 94–16259 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Meeting of the Board of Scientific Counselors, NIDCD

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIDCD, on August 9, 1994 from 3 pm to adjournment. The meeting will be conducted as a telephone conference call originating from Building 31C, Room 3C–05, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the entire meeting will be closed to the public. The meeting will be for the review and discussion of candidates for the tenure track of the Division of Intramural Research, National Institutes on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Jay Moskowitz, Ph.D., Acting Executive Secretary, Board of Scientific Counselors, NIDCD, Building 31, Room 3C02, Bethesda, Maryland 20892.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders.

Dated: June 28, 1994

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16257 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: July 14, 1994.

Time: 9:00 a.m.

Place: OMNI Shoreham Hotel, Washington, DC.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., room 309, Bethesda, MD 20892, (301) 594–7257.

Purpose/Agenda: To review Small Business Innovation Research Program.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393 93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16256 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: July 14, 1994.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 309.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.

Date: July 22, 1994.

Time: 10:00 a.m.

Place: St. James Hotel, Washington, DC.

Contact Person: Dr. Luigi Giacometti, M.Sc., Ph.D., Scientific Review Administrator, 5333 Westbard Ave., room 325B, Bethesda, MD 20892, (301) 594–7132.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16255 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 59 FR 28109, May 31, 1994), is amended to reflect the following changes in the Bureau of Health Resources Development:

1. Abolish the Division of Facilities Assistance and Recovery, the Division of Facilities Compliance, and the Division of Facilities Loans;

2. Establish the Division of Facilities and Loans, and the Division of Facilities Compliance and Recovery.

Under HB–10, Organization and Functions amend the functional statements for the *Health Resources and Services Administration (HB)* by deleting the functional statements for *the Division of Facilities Compliance (HBB5), Division of Facilities Assistance and Recovery (HBB6),* and *the Division of Facilities Loans (HBB7)* in their entirety. Insert the following functional statements after Division of Trauma and Emergency Medical Systems (HBB8).

Division of Facilities Compliance and Recovery (HBB9)

The Division substantiates health facilities' compliance with the reasonable volume of uncompensated care assurance. Specifically: (1) Establishes, develops, and monitors the implementation of regulations, policies, procedures, and guidelines for use by regional staff and health care facilities in ascertaining that assurances are met; (2) plans and directs the development of regulations and program guidelines for administering grant support for health care, health professions education, and nurse training facilities; (3) provides technical assistance and training, and conducts evaluations to ensure nationwide consistency in program administration; (4) maintains a system for receipt, analysis and disposition of audit appeals by obligated facilities; (5) maintains a system for receiving and responding to patient complaints and for their analysis, evaluation and disposition; (6) develops and initiates monitoring activities necessary to ensure enforcement of provisions regarding the reasonable volume assurance; and (7) coordinates its activities with other components of the Bureau, HRSA, other PHS agencies, and other departmental components.

Division of Facilities and Loans (HBBA)

The Division plans and directs the development of regulations and program guidelines for administering loan, loan guarantee and interest subsidy program for health care facilities. Specifically: (1) Develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the PHS responsibility for facility construction, renovation, and modification as described in interagency memoranda of agreement; (3) provides overall consultation and guidance on factors affecting future national requirements in specific types of facilities, geographic distribution and facilities utilization; (4) maintains an automated data system for the issuance of periodic and special reports and for the manipulation of institution specific data in performing tests for financial feasibility; (5) assists in the evaluation and analysis of applications for construction under assigned grant programs; (6) reviews and recommends action on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under loan programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payment, suspension of sinking fund deposits, modifications of loan terms, etc., and (c) requests for recovery and/or waiver of repayment of Federal loan funds; (7) provides advice and guidance to regional staff on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (8) maintains liaison with and coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, other PHS agencies, HHS, other concerned Federal agencies, and with private lending institutions and associations.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This change will be effective on October 1, 1994.

Dated: June 24, 1994.

Ciro V. Sumaga,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–16235 Filed 7–5–94; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance

[Program Announcement No. SSA-ORS–94–1]

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the availability of fiscal year 1994 funds for Section 1110 research grants.

SUMMARY: The Social Security Administration (SSA) announces that competing applications will be accepted for new research grants authorized under Section 1110 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1994 funds in support of the proposed activities. Part I discusses the purpose of the

announcement and briefly describes the application process. Part II describes the programmatic priorities under which SSA is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATES: The closing date for the receipt of grant applications in response to this announcement is September 6, 1994.

FOR FURTHER INFORMATION OR BACKGROUND MATERIAL CONTACT: Ms. Faye Aziz, Coordinator for Extramural Research; Office of Research and Statistics; Social Security Administration; Van Ness Center, room 205; 4301 Connecticut Avenue, NW., Washington, DC 20008; telephone (202) 282–7215.

Part I. Purpose and the Grants Process

A. Program Purpose

This research is intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of SSA programs. Professionals in actuarial science, demography, economics, sociology and related fields are potential users of the results.

In general, SSA will fund types of projects that relate to or examine:

1. Women's issues, especially aged women in poverty.
2. Economic and demographic assumptions used in making projections for the Old Age, Survivors, and Disability Insurance (OASDI) Trust Funds.
3. Issues related to an increase in the retirement age.
4. Issues, using the New Beneficiary Data System, on how aged individuals become poor and how the economic status of individuals with disabilities and their families change.
5. Issues related to differences in calculated poverty rates between the Survey of Income Program Participation (SIPP) and the Current Population Survey (CPS).

B. FY 1994 Grant Process

The grant application process for FY 1994 will consist of a one-stage, full application. Applications are limited to 20 single- or 40 double-spaced pages (excluding resumes, forms, etc.) and must relate to the selection criteria established for review of applications.

Priority areas in this announcement permit applicants to propose research efforts from 12 to 24 months in duration. In item 11 of the Face Sheet (page 1 of form SSA–96–BK) indicate the priority area under which the application is submitted, i.e., ORS–94–001, ORS–94–002, etc.

Part II. Priority Research Areas

In particular, the following projects will be considered for funding:

A. Economic Circumstances of Aged Widows—ORS–94–001

A high proportion of the elderly who are economically vulnerable are widowed women. Although as a group they experience one of the highest rates of poverty, approximately three-quarters of widows aged 65 or older are not poor. Data from the SIPP provide an opportunity to understand the economic circumstances of aged widows and to identify those factors that are associated with their late-life poverty.

Proposals are sought for SIPP-based research that conducts two types of analyses of the poverty of aged widows. The first of these tasks is to provide a comprehensive description of the personal, financial, and environmental characteristics of poor elderly widows. These characteristics will include details of income amounts and specific sources, assets, personal and household characteristics (e.g., age, race, education, work history, fertility history, welfare recipiency history, health status, urban vs rural location, age at which widowhood occurred). This descriptive material should compare and contrast the incidence of poverty and its circumstances for aged widows with similar measures for single elderly women who have never married, aged married women, and, where sample size permits, elderly divorced women.

The second task is to simulate the resulting economic scenario for married women aged 65 or older in the event of the death of their husbands. This will involve projecting the time path of income and assets for the widow, given the couple's economic circumstances at time of the SIPP interviews. The hypothetical widow's income should be based on Social Security and Supplemental Security Income program rules, any pension income she has earned in her own right, whether a husband with public or private pension rights has elected a survivor's option, asset income, the couple's life insurance holdings, and so forth. It is expected that, where possible, the economic status of the couple prior to the husband's death will be related to factors such as lifetime work experience of each spouse, current health status and health insurance coverage, etc. In addition, various scenarios for asset decumulation associated with health expenditures brought on by the husband's death might be introduced to account for reduced assets subsequently available to the surviving spouse [See Linda Del Bene and Denton R. Vaughan, "Income, Assets and Health Insurance: Economic Resources for Meeting Acute Health Care Needs of the Aged," Social Security Bulletin, Spring 1992]. We are interested in learning how the economic status of aged widows compares with their circumstances prior to the husband's death, whether particular background factors can be used to predict which married women are particularly at risk of poverty in their old age, and how the incomes and assets of widows change as the duration of widowhood increases.

Grant proposals must be based on well-developed rigorous analysis. Applications may be submitted for multi-year funding not to exceed 24 months in duration.

The applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that an amount up to $100,000 will be allocated to fund one project under this priority area for the initial 12-month budget period.

B. Selected Economic and Demographic Assumptions Used to Project the Financial Status of the OASDI Trust Funds—ORS–94–002

The annual reports of the Board of Trustees of the Federal OASDI Trust Funds contain long-range, 75-year projections on the financial status of the trust funds. The assumptions and methodology underlying those projections were reviewed by the Panel of Technical Experts (the Panel) convened by the quadrennial Advisory Council on Social Security and recommendations for research were made. (The "Social Security Technical Panel Report to the 1991 Advisory Council on Social Security" and its appendices were reprinted in the November and December 1990 issues of the Social Security Bulletin.)

To address some of the Panel's recommendations for research, the principal topics of this priority are to better understand: (i) the determinants of changes in productivity and earnings, and how to develop better methods of projecting future productivity and earnings; (ii) the determinants of nominal and real interest rates and of

how to project them; (iii) the determinants of fertility and how to project future fertility rates; (iv) the determinants of mortality and how to project future mortality rates; (v) the analysis of *illegal* immigration and how to project such immigration; and (vi) the conceptual framework for the current low-cost and high-cost projections.

Among the questions to be addressed on productivity and earnings are: What are the determinants of linkages between productivity and earnings, particularly hours of work and fringe benefits? What are the effects of the changing quality (including the question of measuring quality) and demographic mix of the labor force? What are the effects of research and development by both the public and the private sectors? What are the effects of capital formation by the public sector (e.g., public infrastructure) and by the private sector? What is the effect of the increasing integration of U.S. and foreign markets? Are there analytical methods or strategies for selecting which averaging periods are most appropriate in determining the various economic assumptions? What is the long-term relationship, if any, between productivity and earnings and other economic and demographic factors?

Among the questions to be addressed on nominal and real interest rates are: To what extent can the current structure of interest rates be used to predict future interest rates? What are the determinants of inflation and are there analytical methods for projecting future inflation rates? What strategies are optimal for incorporating both historical and current interest rate information into the projections? What is the long-term relationship, if any, between nominal and real interest rates and other economic and demographic variables?

Among the questions to be addressed on fertility patterns in this priority area are: What are the determinants of fertility and changes in fertility? What is the relationship between age at first birth and the total fertility rate? How do birth rates of immigrants and of their children compare with those of non-immigrants and their children? Will future trends in fertility rates by race and ethnic group mirror past trends? For assumptions used in projecting fertility, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Among those questions to be addressed on mortality are: What are the determinants of mortality and rates of change in mortality? What evidence is there for projecting changes in mortality for specific causes (e.g., cancer, heart, etc.) based on changes in smoking, nutrition, and other lifestyle patterns? For assumptions used in projecting mortality, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Among the questions to be addressed on *illegal* immigrants are: Estimates of current numbers, labor-force participation rates, and rates of immigration of illegal immigrants; analysis of factors likely to affect future immigration rates of illegal immigrants and projections based on this analysis; the length of coverage and average earnings of illegal immigrants and the length of time they remain in the country; and the extent to which illegal immigrants receive benefits based upon their coverage under the system.

Among the questions to be asked with respect to the conceptual framework for the current low-cost and high-cost projections are: Although theoretically, the current low-cost and high-cost projections represent a collection of extreme values for each of the variables, how should these bounds be interpreted—as absolute bounds on what could possibly happen, as confidence levels, as illustrative alternative projections, or as sensitivity analyses? (Attention should be given to the way in which rates of inflation are incorporated into the low-cost and high-cost projections.) Should the projections incorporate interrelationships among the economic and demographic variables (for example, among others, interactions among fertility, marital status, labor force participation, and birth expectations), and if so, which interrelationships are critical, and how should they be incorporated?

Grant proposals must be based on well-developed rigorous analysis. Applications may be submitted for multi-year funding not to exceed 24 months in duration.

The applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that up to $240,000 will be allocated to fund one or more projects under this priority area for the initial 12-month budget period.

C. Issues Related to the Scheduled Increase in the Retirement Age—ORS–94–003

The Social Security Amendments of 1983 (Public Law 98–21) provide for a gradual increase in the age at which unreduced retired-workers benefits are first payable (for brevity, the retirement age) from 65 to 67 between the years 2000 and 2027. Benefits for retired workers still will be available at age 62, but the amount payable will be gradually reduced from the currently payable 80 percent of the unreduced benefit to 70 percent. It has further been proposed to speed up the phase-in to a higher retirement age, and to increase the retirement age to 68 (70 in one proposal). At least one proposal also increases the early retirement age to 65. (The executive summary of the report mandated by Congress and consultant reports were reprinted in the October 1986 and February 1987 issues of the Social Security Bulletin.)

1. The increase in retirement age is based on the assumption that the increase in life expectancy has been accompanied by a corresponding improvement in health and capacity to work. But past studies are inconclusive about the relationship between longevity and work ability, especially among persons in their sixties. Proposals are sought to further investigate these relationships, using either new approaches, more current data, and/or new databases.

One possible approach would be to use microdata collected by the National Health Interview Survey (NHIS) to examine trends in health and ability to work. Data should be presented for subgroups of major interest for the retirement age issue (both early and normal retirement), subject to sampling error problems. A wide range of variables that measure health and ability to work should be included.

2. The retirement-age increase may also impact on the Social Security Disability Insurance (DI) program. Studies are needed to address questions such as: (i) what is the expected impact on the number of DI beneficiaries and their duration on the rolls and on the DI Trust Fund; (ii) how many workers would qualify for DI benefits at age 65 and 66 and how many would elect to receive benefits; and (iii) among those aged 62–64 who do not now elect to apply for DI benefits, how many might do so because of the additional reduction in benefits for early

retirement that accompanies a retirement-age increase (including the elimination in some proposals of *early* benefits for workers aged 62–64)?

Grant proposals must be based on well-developed, rigorous analysis. Applicants may submit applications for funding not to exceed 17 months in duration.

The applications should include a budget for the total period of the grant (not to exceed 17 months). If the application is approved, a grant will be awarded for the entire budget period of the grant. It is anticipated that up to $190,000 will be allocated to fund one or more projects for up to 17 months under this priority area.

D. Analyses of the New Beneficiary Data System—ORS–94–004

This project is intended to encourage research with the New Beneficiary Data System (NBDS) developed by SSA over the past decade to study the changing circumstances of aged and disabled beneficiaries. Based initially on a survey of new beneficiaries at the beginning of the 1980's, the dataset has been expanded with information from administrative records (on benefits, covered earnings, Supplemental Security Income, and Medicare) and followup interviews with survivors from the original survey. With the exception of the Medicare records, all administrative data have been obtained both for respondents and spouses.

The original sample contained representative samples of new Social Security beneficiaries who filed for benefits as retired workers, disabled workers, wives, widows, divorced wives, and surviving divorced wives. There was also a representative sample of persons aged 65 and over who were entitled to Medicare benefits but who had not yet received Social Security cash benefits. The aged sample was, for the most part, in its mid- to late-60's in 1982 and in its mid- to late-70's in 1991. Some of the sample members were affected by the "notch" that was created when legislation was enacted to correct for an overcompensation in the benefit formula for inflation.

The original interview covered a wide range of topics, including demographic characteristics, marital and childbearing history, employment history, current income (in the format of the SIPP) and assets, and health. The followup interview, in addition to asking many of the same questions as the original interview, collected a history of critical events since 1982 (such as widowhood or divorce, work cessation, migration, and the sale of the home) and the financial impact of these critical events. The original health items of work disability, functional capacity, and presence of major diseases were expanded to assess specific Activities of Daily Living and Instrumental Activities of Daily Living, private health insurance provisions, and the longest experience in a long-term care facility. Disabled workers who returned to work were asked about their job search experience, employer accommodations to their disability, and their use of vocational and rehabilitation services.

Background material and a compilation of reports based on the 1982 New Beneficiary Survey are available. These reports were also published in various editions of the Social Security Bulletin from 1983 to 1993.

Using the NBDS, the following projects will be considered for funding:

1. Understanding How Aged Beneficiaries Become Poor

Although poverty rates among the aged have declined substantially over the last 30 years, there are still some troublesome problems and poverty among aged women is a particular concern. Various legislative proposals have been made or discussed to improve the treatment of women under the Social Security program, including care-giving credits, increasing benefits at some age, eliminating the actuarial reduction for early benefit receipt at some age, modifying the Social Security special minimum benefit, and redesigning couple benefits in order to enhance survivor benefits. However, many of the proposals are not well targeted to the poor. Proposals for research are sought to increase our understanding of why aged beneficiaries, and especially aged women, become poor, which will improve our ability to form policy in this area.

Some of the key research questions are: To what extent is aged poverty a continuation of a lifetime of low income? To what extent is aged poverty a result of aged couples decumulating assets as they age? What are the economic effects of widowhood, including the extent to which sources of income are lost or reduced, and the extent to which high health care expenditures surrounding the death of a spouse are a major cause of high poverty rates among the aged who have become widowed? Is the type of social security benefit received (retired worker benefits, wife or widow benefits, worker benefits that are supplemented because of entitlement to a higher spouse or survivor benefit and those that are not, retirement benefits that were converted from a disability benefit at age 65 and those that were not) related to differing poverty rates in 1982, and are those patterns the same among beneficiaries 10 years later? How different is the role of major sources of income (including social security, other pensions, asset income, earnings, and Supplemental Security Income—an SSA-administered "safety net" program) in 1991 than it was in 1982?

2. Changing Economic Status of Individuals With Disabilities and Their Families

We know that newly disabled individuals in 1982 were less well-off than newly retired individuals in terms of both income and assets. However, little or no research has been done to follow disabled individuals over time to determine whether they have particular problems maintaining an adequate standard of living. The well-being of many individuals with disabilities depends not only on their own income but also on the income and/or services provided by family members, such as the earnings of spouses, or help with activities of daily living that may mean the difference between living in the community and having to be institutionalized.

Among the questions to be addressed are: How adequate are the income and assets of individuals with disabilities just after benefit receipt and 10 years later? To what extent do disabled individuals maintain their economic status over this period of time? What factors are associated with changes in economic status over the period? How do family members affect the economic status of disabled workers?

Analyses should include background factors (such as demographic characteristics, previous occupational characteristics and earnings, living arrangements, family characteristics, and health conditions), major changes in life circumstances (such as widowhood or divorce, changes in living arrangements, or a spouse changing hours of work or retiring), sources of income, changes in the health status, and health-care costs and how these factors relate to various economic outcomes.

Proposals should identify the expected methods of analysis, the possible variables to be considered, and the logic for inclusion. Application may be submitted for multi-year funding not to exceed 24 months in duration.

The applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial

12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that up to $190,000 will be allocated to fund one or more projects for the initial 12-month budget period under this priority area.

E. Documenting and Explaining SIPP-CPS Differences in Aged Poverty Rates—ORS–94–005

The official poverty measure and its three derivative statistics (poverty counts, poverty rates and poverty gaps) are important and frequently used criteria employed in the formulation of policy and the evaluation of program outcomes for the aged and disabled populations served by SSA.

Twelve-month poverty rates based on the SIPP are somewhat lower for many population subgroups than the poverty rates estimated from the CPS. Much of the comparison of poverty rates from the two surveys has been based on the first operational SIPP panel (the 1984 panel) which pertained to the 1983–85 time period. In the 1984 panel context, SIPP-CPS poverty rate differences for the aged, were, if anything, less marked than for younger age groups. Based on a review of published poverty rate estimates based on SIPP panels for 1985–1990 and comparison to corresponding estimates based on the CPS, it appears that a significant change in the pattern of SIPP-CPS differences in poverty rates appeared with the introduction of the 1985 SIPP panel. Key features of the change in the pattern of SIPP-CPS differences in poverty rates include: 1) a modest decline in the poverty rate for all ages in the SIPP relative to the CPS; 2) a much more marked SIPP-CPS difference in poverty rates for the aged than the nonaged (with SIPP rates for the aged ranging between 28 and 34 percent below those based on the CPS); 3) a marked attenuation of the tendency for poverty rates to increase strongly with age among those age 65 and older in the SIPP context as compared with the CPS. Furthermore, preliminary research conducted at SSA indicates that SIPP—CPS poverty rate differences among the aged appear to vary significantly by sex, age, marital status, race and ethnicity; differences appear to be particularly marked for persons who are married, white, or age 85 or older.

Studies are needed (1) to describe more fully the pattern of SIPP—CPS differences in poverty estimates for the aged, and (2) to establish, if possible, the factors giving rise to the observed differences. SIPP-CPS differences should be delineated for population subgroups defined in terms of salient characteristics such as marital status, more broadly defined aspects of family composition, including the presence of nonaged family members, age, race and ethnicity. Differences should, at a minimum, be characterized in terms of poverty counts, rates, and the poverty gap. Particular attention should be given to evaluating possible differences between the two surveys in the portrayal of poverty as it relates to increasing age. Given that the pattern of poverty by population subgroup is of particular interest, the relatively small sample size available in single SIPP panels as compared with the CPS is likely to be of some concern. If, as is suggested by review of published estimates, it can be shown that the basic patterns of SIPP-CPS differences are stable across the post-1984 SIPP panels, serious consideration should be given to pooling the post-1984 panels in order to support as detailed a subgroup analysis as is possible, given the substantially larger sample sizes available from pooled samples. If the combining of SIPP panels seems feasible, the combined panels should be employed to support the explanatory phase of the overall study, as well.

After developing a plan for documenting more fully SIPP-CPS differences in the portrayal of poverty among the aged, the grantee might discuss how the observed differences might be explained. In this regard a critical review of the literature that has considered the differences between poverty rate estimates from the Panel Study of Income Dynamics (PSID) and the CPS might prove quite useful in generating hypotheses and in formulating empirical approaches to testing the hypotheses. While several possible factors are likely to be suggested by this review (e.g., sample weighting, particularly that component of the overall weighting scheme designed to deal with panel attrition; differing operationalizations of the income unit; differing income concepts; and the quality of income data), emphasis in empirical work should be given to the last factor, the relative quality of the income data from the two surveys. However, some attention could also be given to the change in SIPP-CPS differences in poverty estimates that occurred with the introduction of the 1985 SIPP panel.[1] The nature of each hypothesized factor to be considered and how it might cause the observed pattern of SIPP-CPS differences might be described. A closely reasoned plan for empirically assessing the possible impact data quality on the differences in SIPP-CPS poverty rates for the aged may be presented. Particular emphasis should be given to explaining the relevance of each proposed test for clarifying the observed pattern of SIPP-CPS differences, notwithstanding the fact that it may not be possible to devise fully unambiguous tests of the effects of income data quality on the observed SIPP-CPS differences.

Given the level of available funding, empirical work should be limited to describing the pattern of SIPP-CPS differences in poverty estimates (rates, counts, and gaps).

As much of the study will revolve around comparison of alternative estimates within or between survey contexts, issues of statistical inference also need to be given careful consideration. In particular, given the results of SSA research on the variance properties of SIPP-based estimates of the aged, standard errors for SIPP estimates should be based on the generalized variance parameters as estimated by SSA (see the note by Bye and Gallicchio appearing in the winter 1993 Social Security Bulletin) or calculated directly from the survey file using the methods outlined in the Bye-Gallicchio article.

Grant proposals must be based on well-developed, rigorous analysis. Applicants may submit applications for funding not to exceed 17 months in duration.

The applications should include a budget for the total period of the grant (not to exceed 17 months). If the application is approved, a grant will be awarded for the entire budget period of the grant.

It is anticipated that an amount up to $135,000 will be allocated to fund one or more projects for up to 17 months under this priority area.

Note: To foster the sharing of research, principal investigators for each grant awarded will be required to (1) include in the final report an executive summary which SSA could publish in the quarterly Social Security Bulletin and (2) discuss the results of their research with SSA staff. Funds should be included in the grant budget for a meeting at the SSA Office of Research and Statistics, Washington, DC.

[1] The prospective grantee will find it useful to consult recent work conducted by the Bureau of the Census comparing income estimates for calendar year 1990 from the two surveys and Report no. 17, Studies in Income Distribution, for similar material related to SIPP/CPS differences for the 1983–84 period. Recent work conducted at the Bureau of the Census by Lamas, Tin and Eargle about the effect of attrition in the SIPP context on differences in SIPP-CPS poverty rates should also be consulted.

Part III. Application Process

A. Eligible Applicants

Any State or local government, public or private organization, nonprofit or for-profit organization, or agency, hospital, or educational institution may apply for a grant under this announcement. Applications will not be accepted from applicants which do not meet the above eligibility criteria at the time of submission of applications.

Individuals are not eligible to apply. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization is a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf.

B. Availability and Duration of Funding

SSA anticipates allocating up to $100,000 to fund the initial 12-month budget period of a 24-month grant for one project in priority area ORS–94–001, "Economic Circumstances of Aged Widows." SSA anticipates allocating up to $240,000 to fund the initial 12-month budget period for one or more projects in priority area ORS–94–002, "Selected Economic and Demographic Assumptions Used to Project the Financial Status of the OASDI Trust Funds." SSA anticipates allocating up to $190,000 to fund one or more projects not to exceed 17 months in duration in priority area ORS–94–003, "Issues Related to the Scheduled Increase in the Retirement Age." SSA anticipates allocating up to $190,000 to fund the initial 12-month budget period of 24-month grants for one or more projects in priority area ORS–94–004, "Analysis of the New Beneficiary Data System." Also, SSA anticipates allocating up to $135,000 to fund one (1) or more projects not to exceed 17 months in duration in priority area ORS–94–005, "Documenting and Explaining SIPP–CPS Differences in Aged Poverty Rates."

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by September 6, 1994. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel.

Successful applicants may expect funding during the fourth quarter of FY 1994 (prior to September 30, 1994).

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from the Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207; telephone (410) 965–9500; Mr. Lawrence H. Pullen, Chief, Grants Management Staff.

When requesting an application kit, the applicant should refer to program announcement number SSA–ORS–94–1 and the date of this announcement to ensure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Ms. Faye Aziz, Coordinator for Extramural Research; Office of Research and Statistics; Social Security Administration; Van Ness Center, Room 205; 4301 Connecticut Avenue, NW; Washington, DC 20008; telephone (202) 282–7215.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Staff. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA–96–BK, item 11), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–ORS–94–1) and must show the appropriate priority area project identifier (i.e., ORS–94–001, ORS–94–002 etc.).

Applications must be submitted to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Applications that conform to the requirements of this program announcement will be reviewed and evaluated against the criteria specified in No. 6(b) of this announcement and evaluated by Federal and non-Federal personnel. The results of this evaluation will assist SSA in selecting the applications to be funded.

5. Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the grant award.

6. Criteria for Screening and Reviewing of Applications

(a) Screening Requirements. In order for an application to be in conformance, it must meet *all* of the following requirements:

(1) Number of Copies: An original signed application and two copies must be submitted. Five additional copies are optional and will expedite processing of the grant application.

(2) Length: The narrative portion of the application (Part III of form SSA–96–BK) must not exceed 20 single- or 40 double-spaced pages, exclusive of resumes, forms, etc., typewritten on one side only using standard size (8½" × 11") paper. Applications should neither be unduly elaborative nor contain voluminous documentation.

(3) Non-Federal Contribution (Match): Grant recipients must contribute towards the project costs (cash or in-kind). Generally, 5 percent of the total costs is acceptable. SSA will not provide 100 percent or total funding for any project grant.

(b) Evaluation Criteria. Applications which pass the screening process will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the criteria shown below. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application. Relative weights for the criteria are shown in parentheses.

(1) Project Objective: (25 points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research? What is the potential usefulness of the anticipated result and expected benefits to the target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

(2) Project Design: (30 points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) a concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, demonstrate that they have the knowledge of subject matter and skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks?

(4) Organization and Budget: (15 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided, including a description by category (personnel, travel, etc.) of the total of the Federal funds required? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

Please Note: For-profit organizations may not use grant funds to purchase equipment under the grant. Equipment means tangible, non-expendable, personal property having a useful life of more than 1 year and an acquisition cost of $5,000 or more per unit.

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is September 6, 1994.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207.

Hand-delivered applications are accepted during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date at the above address; or

(b) Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile copies will not be accepted.

Notice Procedures

Paperwork Reduction Act

This notice contains reporting requirements in the "Application Process" section. However, the information is collected using form SSA–96–BK, *Federal Assistance,* which has Office of Management and Budget clearance No. 0960–0184.

Executive Orders 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to Federal agencies providing opportunities for consultation with State and local elected officials on proposed Federal financial assistance or direct Federal development.

(Catalog of Federal Domestic Assistance: Program No. 93.812, Social Security-Research and Demonstration)

Dated: June 22, 1994.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94–16284 Filed 7–5–94; 8:45 am]

BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the initial meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA).

The meeting of the Advisory Committee for Women's Services will include an orientation of new members, a discussion of the mission of SAMHSA and its programs for women, administrative announcements, and program developments.

A summary of the meeting, a roster of committee members and/or substantive information about the upcoming meeting may be obtained from: Jennifer B. Fiedelholtz, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–5184.

Committee Name: Advisory Committee for Women's Services.

Meeting Dates: July 26–27, 1994.

Place: Conference Rooms G–H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: July 26, 1994, 9:00 a.m.–5:00 p.m., July 27, 1994, 9:00 a.m. until adjournment.

Contact: Jennifer B. Fiedelholtz, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–16263 Filed 7–5–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Exxon Valdez Oil Spill Public Advisory Group Nomination Solicitation.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is soliciting nominations for the Public Advisory Group which advises the Trustee Council on decisions related to the planning, evaluation, and conduct of

injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement pursuant to the T/V Exxon Valdez oil spill of 1989. Public Advisory Group members will be selected to serve a two-year term beginning in October 1994.

DATES: All nominations should be received on or before August 1, 1994.

ADDRESSES: Nominations should be sent to the Exxon Valdez Oil Spill Trustee Council, 646 G Street, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska, (907) 271–5011; or L.J. Evans, Exxon Valdez Oil Spill Restoration Office, 645 G Street, Anchorage, Alaska, (907) 278–8012. A copy of the charter for the Public Advisory Group is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities, or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Group consists of 17 members representing the public at large (5 members) and the following special interests: aquaculture, commercial fishing, commercial tourism, forest products, environmental, conservation, local government, Native landowners, recreation users, sport hunting and fishing, subsistence, and science/academic. Two additional ex officio non-voting members are from the Alaska State House of Representatives and the Alaska State Senate.

Nominees need to submit the following information to the Trustee Council:

1. A biographical sketch (education, experience, address, telephone);

2. Information about the nominee's knowledge of the region, peoples, or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill, or expertise in public lands and resource management;

3. Information about the nominee's relationship/involvement (if any) with the principal interest to be represented;

4. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to serve as a member;

5. Any additional relevant information that would assist the Trustee Council in making a recommendation; and

6. A disclosure statement of any potential conflict of interest. Public Advisory Group members and their alternates are chosen to represent a broad range of interests. It is possible that action could be taken by the Public Advisory Group when one or more of the members have a direct personal conflict of interest which would prejudice and call into question the entire public process. To avoid this eventuality and to enable the Trustee Council to choose appropriate individuals as members and/or alternates to members, it is necessary that each nominee provide the following information with their information packet. If the answer to any of these questions is yes, please provide a brief explanation of your answer. A yes will not necessarily preclude any nominee from being appointed to serve on the Public Advisory Group.

a. Do you, your spouse, children, any relative with whom you live or your employer have, or are you defending, a claim filed before any court or administrative tribunal based upon damages caused by the T/V Exxon Valdez oil spill?

b. Do you, your spouse, children, any relative with whom you live or your employer own any property or interest in property which has been, or is likely to be, proposed for acquisition by the Trustee Council?

c. Have you, your spouse, children, any relative with whom you live or your employer submitted, or likely will submit, a proposal for funding by the Trustee Council, or be a direct beneficiary of such a proposal?

d. Do you know of any other potential actions of the Trustee Council or the Public Advisory Group to have a direct bearing on the financial condition of yourself, your spouse, children, other relative with whom you live or your employer?

Jonathan P. Deason,

Director—Office of Environmental Policy and Compliance.

[FR Doc. 94–16311 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–RG–M

Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of Meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on Tuesday and Wednesday, August 2–3, 1994, at 9:30 a.m., in the first floor conference room, 645 G Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include the review of and comment on the draft 1995 Work Plan, reports of subcommittees, and status reports on various restoration activities.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–16310 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[ES–020–04–4210–05:ARES–042126; 4–00157; ILM]

Realty Action; Direct Sale of Public Lands; Arkansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands; Arkansas.

SUMMARY: The Bureau of Land Management has determined the land

described below is suitable for sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719:

Fifth Principal Meridian

T. 16 N., R. 6 W.,
Section 22, SE¼ SE¼.

The above land aggregates 40 acres in Sharp County, Arkansas.

FOR FURTHER INFORMATION CONTACT:

Robert V. Abbey, District Manager, Jackson District Office, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to Danny Smith of Ash Lawn, Arkansas, pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. Mr. Smith wishes to acquire the land as this particular tract if completely surrounded by land he owns.

The proposed direct sale is scheduled for September 26, 1994. The land parcel is to be offered at the market value. The land contains no other known public values. Detailed information concerning the proposed sale including the mineral report and environmental assessment are available at the Bureau of Land Management, Jackson District Office, 411 Briarwood Drive, Jackson, MS 39206.

Conveyance of the above land will be subject to reservation of all minerals to the United States with the right to prospect for, mine and remove the same.

The public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever comes first.

For a period of 45 days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, 411 Briarwood Drive, Suite 404, Jackson, MS 39206. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify the realty action. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Dated: June 22, 1994.

Sammy St. Clair,

Acting District Manager.

[FR Doc. 94–16246 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Notice of Record of Decision for Walnut Creek National Wildlife Refuge Master Plan, Jasper County, IA

AGENCY: Fish and Wildlife Services, U.S. Department of the Interior.

ACTION: Notice.

SUMMARY: This notice makes available to the public a summary of the Record of Decision (ROD) for the proposed Master Plan for the Walnut Creek National Wildlife Refuge, located in Jasper County, Iowa. Establishment of the 8,654-acre Refuge was approved on September 5, 1990. Federal funding for design, construction, and operation of the Refuge is provided through appropriations by the U.S. Congress. Pursuant to Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1505.2), the Service issues this ROD upon consideration of the Final Environmental Impact Statement (FEIS) prepared for the Proposed Action. The U.S. Department of Army, Corps of Engineers (USCOE), acting as a cooperating agency in the preparation of the FEIS also adopts the FEIS and ROD as its NEPA documentation.

A Notice of Availability of the FEIS was published by the U.S. Environmental Protection Agency in the **Federal Register** on July 23, 1993.

The FEIS evaluated alternatives for four elements of the Master Plan: habitat/wildlife emphasis, management, programs, and facilities siting. Based upon an evaluation of the impacts of the various alternatives on the physical, biological, social, and economic environments, the Preferred Alternative was identified. The Preferred Alternative is a balance of several options and is comprised of the following elements:

Alternative I.D: Restoration and reconstruction of over 7000 acres of tallgrass prairie/savanna habitat with reintroduction of bison and elk.

Alternative II.E: Active habitat reconstruction and management to maximize environmental education.

Alternative III.C: Intermediate refuge program including indoor and outdoor environmental education programs and facilities, a visitor center with a tour route and trail system, small laboratory facilities and overnight accommodations for researchers; and other opportunities for interpretation and recreational public use.

Alternative IV.B: Consolidated facilities siting the visitor center, research facilities and maintenance facility in a central campus.

Other alternatives considered included: the no build alternative, creation of extensive wetland habitat for waterfowl and fisheries, limited public use programs and facilities and active prairie reconstruction to maximize research.

Comments Received

Prior to preparation of the FEIS, the Draft Environmental Impact Statement (DEIS) on the Proposed Master Plan for the Walnut Creek National Wildlife Refuge was circulated for public review and comment. Comments were received from agencies and individuals expressing concerns about the findings of the DEIS. Issues raised in these comments included but were not limited to the habitat reconstruction process including seed sources, the potential for habitat fragmentation, and the reintroduction of bison and elk; the potential environmental effects of recreational facilities; the siting of Refuge facilities to minimize environmental impacts; Section 404 permit requirements; Refuge access; and historic resource issues. All substantive issues raised in the comments have been addressed to the satisfaction of the Service and the USCOE either through revisions incorporated into the FEIS text or responses contained in Section 6.5 of the FEIS. These responses are incorporated by reference into the ROD. No comments were received on the FEIS.

Findings and Decision

Based upon a careful review and consideration of the impacts identified in the FEIS, results of the various studies and surveys conducted in conjunction with the DEIS and FEIS, public comments received on the DEIS, and other relevant factors, including the purposes for which the Refuge was established by Congress and statutory and regulatory guidance for funding such projects, the Service, with concurrence by the USCOE, finds as follows:

(1) The Preferred Alternative consists of the programs and facilities mentioned above.

(2) The Preferred Alternative represents the best balance between provision of environmental education, interpretive, recreational, and research facilities and programs, minimization of environmental impacts, and public and agency concerns identified during the public participation process.

(3) Consistent with economic, social, and other essential considerations, to the maximum extent practicable, potential adverse environmental effects identified in the FEIS will be minimized or avoided by incorporating mitigative measures as conditions of Federal

funding approval and permit issuance. These measures are described in Section 4.0 of the FEIS.

(4) A wetland mitigation plan providing in-kind and on-site replacement for unavoidable adverse impacts to existing wetlands has been developed and will be implemented, resulting in no net loss of wetland habitat values over time. Specific details regarding the mitigation plan have been developed through the Section 404 permit process.

(5) No state or federally listed endangered or threatened species or their critical habitats are known to be adversely affected by the project.

(6) No historic properties listed in or eligible for listing in the National Register of Historic Places are known to be adversely affected by the project.

(7) Statutory authority for the Service to fund and implement, and for the USCOE to permit, the project exists.

(8) The requirements of NEPA and the implementing regulations (40 CFR Parts 1500–1508) have been satisfied.

The ROD serves as the written facts and conclusions relied upon in reaching this decision. A complete copy of the ROD is filed at the Refuge together with the other NEPA documents. For further information contact: Mr. Richard M. Birger, Refuge Manager, Walnut Creek National Wildlife Refuge, P.O. Box 399, Prairie City, Iowa 50228. Telephone: (515) 994–2415.

Dated: June 22, 1994.

Thomas J. Kerze,

Acting Regional Director.

[FR Doc. 94–16247 Filed 6–5–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 24, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 21, 1994.

Beth Boland,

Acting Chief of Registration, National Register.

CONNECTICUT

Hartford County

Barlow, Boce W., Jr., House, 31 Canterbury St., Hartford, 94000767

Johnson, Wilfred X., House, 206 Tower Ave., Hartford, 94000765

Metropolitan African Methodist Episcopal Zion Church, 2051 Main St., Hartford, 94000769

Middlesex County

North Cove Historic District, Roughly, N. Cove Rd., from Church St., to the Connecticut R. and adjacent properties on Cromwell Pl., Saybrook, 94000766

Windham County

Aldrich Free Public Library, 299 Main St., Plainfield, 94000768

FLORIDA

Indian River County

Driftwook Inn and Restaurant, 3150 Ocean Dr., Vero Beach, 94000751

Sarasota County

Binz, Frank and Matilda; House, 5050 Bay Shore Rd., Sarasota, 94000736

GEORGIA

De Kalb County

Oglethorpe University Historic District, 4484 Peachtree Rd., NE., Atlanta, 94000779

KENTUCKY

Jefferson County

Jewish Hospital Complex, 236 E. Kennedy St., Louisville, 94000732

Mason County

Richeson, John Brett, House, 331 W. Third St., Maysville, 94000733

LOUISIANA

Iberia Parish

Dulcito Plantation House, 5918 Old Spanish Trail W. (LA 182), New Iberia vicinity, 94000742

MAINE

Waldo County

Archeological Site No. 39.1 (Maine Fluted Point Paleoindian Sites MPS), Address Restricted, Searsmont vicinity, 94000759

MARYLAND

Harford County

The Vineyard, 1201 Conowingo Road. (US 1), Bel Air vicinity, 94000762

Somerset County

Puncheon Mill House, Puncheon Landing Rd., Pocomoke City vicinity, 94000763

Baltimore Independent City

Upton, 811 W. Lanvale St., Baltimore (Independent City), 94000764

MASSACHUSETTS

Hampshire County

Hatfield Center Historic District, Roughly bounded by the Connecticut and Mill Rivers and Day Ave., Hatfield, 94000737

Upper Main Street Historic District, Main St. from 83 Main to Cow Bridge, 1—44 King St. and 6—70 North St., Hatfield, 94000735

MICHIGAN

Calhoun County

Lockwood, Isaac, House, 14011 Verona Rd., Marshall Township, Marshall vicinity, 94000748

Jackson County

Hitt, Gordon, Farmstead, 4561 N. Lake Rd., Columbia Township, Clark Lake vicinity, 94000743

Keweenaw County

Sand Hills Light Station, Five Mile Point Rd., N of Mohawk, Allouez Township, Mohawk vicinity, 94000746

Livingston County

Hecox, Frank J., House, 3720 W. Grand River Ave., Howell Township, Howell vicinity, 94000745

Oakland County

Aldrich, Royal, House, 31110 W. 11 Mile Rd., Farmington Hills, 94000755

St. Clair County

Colony Tower Complex, 6503 Dyke Rd. (MI 29), Clay Township, Pearl Beach, 94000756

Shiawassee County

Pere Marquette Railway Steam Locomotive No. 1225, 600 S. Oakwood St., Owosso, 94000744

Washtenaw County

Kellogg—Warden House, 500 N. Main St., Ann Arbor, 94000754

Wayne County

Hunter, Mulford T., House, 77 W. Hancock Ave., Detroit, 94000757

Loomer, George W., House, 71 W. Hancock Ave., Detroit, 94000753

Richard, Pere Gabriel, Elementary School, 176 McKinley Ave., Grosse Pointe Farms, 94000752

Wexford County

Masonic Temple Building, 122–126 N. Mitchell St., Cadillac, 94000747

MINNESOTA

Morrison County

Little Falls Commercial Historic District, Roughly, First St. SE. from First Ave SE. to First Ave. NE., Little Falls, 94000740

Stearns County

Original Main Street Historic District, Main St. between S. Eighth and N. Third Sts., Sauk Centre, 94000758

MISSOURI

Cape Girardeau County

Clark, George Boardman, House, 6 S. Fountain St., Cape Girardeau, 94000738

Klostermann Block, 7, 9, 11, 13 and 15 S. Spanish St., Cape Girradeau, 94000739

MONTANA

Flathead County

Kearney Rapids Bridge (Historic Bridges of Montana MPS), Bigfork Canyon Rd., Bigfork vicinity, 94000734

OHIO

Auglaize County

Uniopolis Town Hall, Ohio St. (OH 67) E of jct. with Main St., Uniopolis, 94000773

Bulter County

Greenwood Cemetery, 1602 Greenwood Ave., Hamilton, 94000771

Franklin County

Bradford Shoe Company Building, 232 Neilston, Columbus, 94000772

Hamilton County

Baxter, James, House, 2930 Fair Acres Dr., Amberley Village, 94000774

Stark County

Miller, John, House, 9677 Cleveland Ave. NW., Greentown, 94000775
Science Hill School, 11810 Beeson St., Alliance vicinity, 94000776

Tuscarawas County

Ragersville School, 8807 Co. Rd. 52 SW. (Crooked Run Rd.), Ragersville, 9400077

Wayne County

Liggett—Freedlander House, 408 N. Bever St., Wooster, 94000770

TENNESSEE

Davidson County

Sandbar Village (Mississippian Cultural Resources of the Central Basin MPS), Address Restricted, Nashville vicinity, 94000749

VIRGINIA

Rockbridge County

Clifton, VA 631 N side, 2000 ft. E of jct. with US 11, Lexington vicinity, 94000778
Mulberry Grove, VA 724 S side, 5000 ft. SE of jct. with VA 252, Brownsburg vicinity, 94000761
Oak Spring Farm, VA 706 at jct. with US 11, Fairfield vicinity, 94000780

Manassas Independent City

Manassas Industrial School for Colored Youth, Address Restricted, Manassas (Independent City), 94000760

WASHINGTON

Spokane County

Hutton Settlement District (Boundary Increase), 9907 Wellesley, Spokane vicinity, 94000750

WYOMING

Converse County

Fremont, Elkhorn & Missouri Valley Railroad Passenger Depot, 100 Walnut St., Douglas, 94000741

[FR Doc. 94–16283 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 361X)]

Burlington Northern Railroad Company—Abandonment Exemption—In Bureau County, IL

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 5.09 [1] miles of rail line between milepost 193.36 near Ladd and milepost 188.27 near Howe in Bureau County, IL.

BN has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on this line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 1994,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 18, 1994.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 11, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 27, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16226 Filed 7–5–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Although BN stated it was abandoning 5.13 miles of rail line, the actual mileage between mileposts is 5.09 miles.

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of August 4, 1994. Because the verified notice was filed June 16, 1994, consummation could not take place prior to August 5, 1994. BN's representative has confirmed that the correct consummation date is on or after August 5, 1994.

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated May 3, 1994, and published in the **Federal Register** on

May 10, 1994, (59 FR 24184), Organix Inc., 65 Cummings Park, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–16274 Filed 7–5–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

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 show below, not later than July 18, 1994.

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 July 18, 1994.

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 20th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union workers firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Classic Lady Fashions (Co)	Hialeah Gardens, FL.	06/20/94	04/26/94	29,978	Ladies' Sportswear.
Xerox Corp, Off. Document Prod Div (Wkrs).	Rochester, NY	06/20/94	06/08/94	29,979	Copiers.
Martin Marietta (IFPTE)	Moorestown, NJ	06/20/94	04/04/94	29,980	Defense Electronics Products.
Ecklund Engine Systems (IAM)	Washington, MO	06/20/94	06/03/94	29,981	Carburator Parts.
Joseph H. Hill Co (Co)	Richmond, IN	06/20/94	05/27/94	29,982	Roses.
Hill Floral Products, Inc (Wkrs)	Richmond, IN	06/20/94	05/27/94	29,983	Roses.
Hoffend & Sons, Inc (Wkrs)	Honeoye, NY	06/20/94	06/07/94	29,984	Stage Rigging Equipment.
Farah Mfg. Co (Wkrs)	El Paso, TX	06/20/94	06/06/94	29,985	Ladies' Pants and Jackets.
New York Air Brake Corp (Co)	Watertown, NY	06/20/94	06/03/94	29,986	Hydraulic Air Brake Units.
Airpol, Inc (Wkrs)	Bakersfield, CA	06/20/94	06/06/94	29,987	Repair Oilfield & Pipeline Equipment.
AT&T Communications (CWA)	Pittsburgh, PA	06/20/94	06/08/94	29,988	Telephone Operator Services.
Autoclave Engineers Group (Wkrs)	Erie, PA	06/20/94	06/08/94	29,989	Pressure Vessels.
Jorca Mfg. Corp (Wkrs)	Hialeah, FL	06/20/94	06/07/94	29,990	Ladies' Blouses and Jackets.
Gucci America, Inc (Wkrs)	Seattle, WA	06/20/94	06/07/94	29,991	Retail Sales.
Virg's DST, Inc (Co)	Littleon, CO	06/20/94	05/26/94	29,992	Oil Services.
Virg's DST, Inc (Co)	Williston, ND	06/20/94	05/26/94	29,993	Oil Services.
Virg's DST, Inc (Co)	Gillette, NY	06/20/94	05/26/94	29,994	Oil Services.
Virg's DST, Inc (Co)	Mohall, ND	06/20/94	05/26/94	29,995	Oil Services.
United States Steel Mining Co (USWA)	Washington, PA	06/20/94	06/10/94	29,996	Coal.
The Seminole Co (Co)	Siminole, OK	06/20/94	06/02/94	29,997	Oil and Gas Services.
Ruth Hornbein Sweaters, Inc (Co)	Brooklyn, NY	06/20/94	06/03/94	29,998	Hand Loomed Cotton Children's Sweaters.
PTI Technologies, Inc (Co)	Newbury Park, CA	06/20/94	06/03/94	29,999	Aircraft Filtration Product.
NIKE, Inc (Wkrs)	Beaverton, OR	06/20/94	06/08/94	30,000	Administrative Services for Nike Inc.
Jencraft Corp (Wkrs)	Elsa, TX	06/20/94	06/05/94	30,001	Vertical and Mini Blinds.
Grumman Space Station Engineering (Wkrs).	Houston, TX	06/20/94	06/10/94	30,002	Engineering Services for Grumman.
Goodyear Tire & Rubber Co (URW)	Logan, OH	06/20/94	06/07/94	30,003	Auto Instrument Panels.
Freitex, Inc (Co)	Albany, GA	06/20/94	06/08/94	30,004	Children's Clothing.
Ford New Holand, Inc (Co)	Troy, MI	06/20/94	06/08/94	30,005	Distribution of Tractor Parts.
Imperial Metal & Chemical Co (Wkrs)	Holyoke, MA	06/20/94	06/09/94	30,006	Aluminum Lithographic Printing Plates.
Alaska Safety, Inc (Co)	Anchorage, AK	06/20/94	03/15/94	30,007	Oil and Gas Services.
Aircraft & Electronic Specialties (Co)	Indianapolis, IN	06/20/94	06/03/94	30,008	Wire Harnesses for Vehicles.
Santa Fe Energy Resources (Co)	Houston, TX	06/20/94	06/10/94	30,009	Oil and Gas Production.
Halliburton Energy Services (Co)	Northslope, AK	06/20/94	06/14/94	30,010	Oil and Gas.
Halliburton Energy Services (Co)	Northport, AL	06/20/94	06/14/94	30,011	Oil and Gas.
Halliburton Energy Services (Co)	Forth Smith AR	06/20/94	06/14/94	30,012	Oil and Gas.

APPENDIX—Continued

Petitioner (union workers firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Halliburton Energy Services (Co)	Bakersfield, CA	06/20/94	06/14/94	30,013	Oil and Gas.
Halliburton Energy Services (Co)	Brighton, CO	06/20/94	06/14/94	30,014	Oil and Gas.
Halliburton Energy Services (Co)	Jay, FL	06/20/94	06/14/94	30,015	Oil and Gas.
Halliburton Energy Services (Co)	Flora, IL	06/20/94	06/14/94	30,016	Oil and Gas.
Halliburton Energy Services (Co)	Evansville, IN	06/20/94	06/14/94	30,017	Oil and Gas.
Halliburton Energy Services (Co)	Great Bend, KS	06/20/94	06/14/94	30,018	Oil and Gas.
Halliburton Energy Services (Co)	Paintsville, KY	06/20/94	06/14/94	30,019	Oil and Gas.
Halliburton Energy Services (Co)	Abbeville, LA	06/20/94	06/14/94	30,020	Oil and Gas.
Halliburton Energy Services (Co)	Kalkaska, MI	06/20/94	06/14/94	30,021	Oil and Gas.
Halliburton Energy Services (Co)	Jackson, MS	06/20/94	06/14/94	30,022	Oil and Gas.
Halliburton Energy Services (Co)	Havre, MT	06/20/94	06/14/94	30,023	Oil and Gas.
Halliburton Energy Services (Co)	Swannanoa, NC	06/20/94	06/14/94	30,024	Oil and Gas.
Halliburton Energy Services (Co)	Williston, ND	06/20/94	06/14/94	30,025	Oil and Gas.
Halliburton Energy Services (Co)	Artesia, NM	06/20/94	06/14/94	30,026	Oil and Gas.
Halliburton Energy Services (Co)	Cambridge, OH	06/20/94	06/14/94	30,027	Oil and Gas.
Halliburton Energy Services (Co)	Burnsflat, OK	06/20/94	06/14/94	30,028	Oil and Gas.
Halliburton Energy Services (Co)	Grove City, PA	06/20/94	06/14/94	30,029	Oil and Gas.
Halliburton Energy Services (Co)	Helenwood, TN	06/20/94	06/14/94	30,030	Oil and Gas.
Halliburton Energy Services (Co)	Abilene, TX	06/20/94	06/14/94	30,031	Oil and Gas.
Halliburton Energy Services (Co)	Vernal, UT	06/20/94	06/14/94	30,032	Oil and Gas.
Halliburton Energy Services (Co)	Norton, VA	06/20/94	06/14/94	30,033	Oil and Gas.
Halliburton Energy Services (Co)	Kirkland, WA	06/20/94	06/14/94	30,034	Oil and Gas.
Halliburton Energy Services (Co)	Blue Creek, WV	06/20/94	06/14/94	30,035	Oil and Gas.
Halliburton Energy Services (Co)	Casper, WY	06/20/94	06/14/94	30,036	Oil and Gas.

[FR Doc. 94–16320 Filed 7–5–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,147]

General Tire, Inc., Mayfield, KY; Affirmative Determination Regarding Application for Reconsideration

On April 25, 1994, after being granted a filing extension, Local #665 of the United Rubber Workers (URW) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm.

The Department's Negative Determination was issued on March 9, 1994, and was published in the **Federal Register** on March 25, 1994 (59 FR 14215).

The union submitted additional import information and the names of additional customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–16318 Filed 7–5–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29, 603, et al.]

Hughes Christiansen Co. a/k/a Baker Hughes Oilfield Operations, Inc. Headquartered in Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm. The certification notice was issued on May 17, 1994 and published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the correct name of the subject firm through December 31, 1992 was Hughes Christiansen Company, Inc. In 1993, Hughes Cristiansen Company became an operating division of Baker Hughes Oilfield Operations, Inc., and the claimants' wages were reported under an unemployment insurance (UI) tax account for Baker Hughes Oilfield Operations, Inc., a subsidiary of Baker Hughes, Inc. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,603 is hereby issued as follows:

"All workers of Hughes Christiansen Company, Houston, Texas a/k/a Baker Hughes Oilfield Operations, Inc., a subsidiary of Baker Hughes, Inc., and operating at various locations in the following cited states who became totally or partially separated from employment on or after January 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA–W–29,603A Alaska
TA–W–29,603B Alabama
TA–W–29,603C Arkansas
TA–W–29,603D Arizona
TA–W–29,603E California
TA–W–29,603F Colorado
TA–W–29,603G Connecticut
TA–W–29,603H Illinois
TA–W–29,603I Kansas
TA–W–29,603J Kentucky
TA–W–29,603K Louisiana
TA–W–29,603L Michigan
TA–W–29,603M Missouri
TA–W–29,603N Mississippi
TA–W–29,603O Montana
TA–W–29,603P North Dakota
TA–W–29,603Q New Hampshire
TA–W–29,603R New Mexico
TA–W–29,603S Ohio
TA–W–29,603T Oklahoma
TA–W–29,603U Oregon
TA–W–29,603V Pennsylvania

TA–W–29,603W South Carolina
TA–W–29,603X Texas
TA–W–29,603Y Utah
TA–W–29,603Z Wisconsin
TA–W–29,603ZA West Virginia
TA–W–29,603ZB Wyoming

Signed at Washington, DC, this 21st day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16324 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,865]

Prudential Insurance and Financial Service, Minneapolis, MN; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–29,865 which was published in the **Federal Register** on June 1, 1994 (59 FR 28425) in FR Document 94–13299. A printing error concerning city and state location appears in the 6th line of the second column in the appendix table on page 28425. The name should read "Minneapolis, Minnesota" instead of "Newark, New Jersey".

Signed in Washington, DC, this 27th day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16319 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,618; TA–W–29,618A]

Sportette Industries, Inc., Nazareth, PA; NU-Place, Inc., Nazareth, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 20, 1994, applicable to all workers of the subject firm. The certification notice was published in the Federal Register on May 11, 1994 (59 FR 24483).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that Nu-Place and Sportette were subsidiaries of Quartet Fashions in New York. The findings show that production at Nu-Place was integrated with the production at Sportette and Nu-Place closed in January 1994.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports of ladies' pants, skirts, blouses and jackets. Accordingly, the Department is amending the certification by including the workers at Nu-Place, Inc. in Nazareth, Pennsylvania.

The amended notice applicable to TA–W–29,618 is hereby issued as follows:

"All workers of Sportette Industries, Inc., Nazareth, Pennsylvania and Nu-Place, Inc., Nazareth, Pennsylvania engaged in the production of ladies' pants, skirts, blouses and jackets who became totally or partially separated from employment on or after March 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 21st day of June 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16323 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Native American Employment and Training Council; Notice of Appointment of Members

SUMMARY: Notice is hereby given that appointments have been made to fill eight (8) vacancies from the seventeen (17) memberships on the Native American Employment and Training Council. The remaining nine (9) members were appointed until June 30, 1995.

The following seven individuals have been reappointed to the Council:

Representing JTPA Section 401 Grantees

Mr. Terry Polchies, Executive Director, Central Maine Indian Association, Inc., Bangor, Maine
Ms. Joan Cofield, JTPA Director, Powhatan-Renape Nation, Ranococas, New Jersey
Ms. Winona Whitman, Employment and Training Program Administrator, Alu Like, Inc., Honolulu, Hawaii

Representing Other Disciplines

Dr. Rose-Alma McDonald-Jacobs, Council Chair and Native American Consultant, Hogansburg, New York
Mr. Eddie L. Tullis, Council Vice Chair and Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama
Mr. Gaiashkibos, President, National Congress of American Indians and Chairman, Lac Courte Oreilles, Hayward, Wisconsin
Mr. Clarence W. Skye, Executive Director, United Sioux Tribes of South Dakota, Pierre, South Dakota.

One individual, representing another discipline, has been newly appointed to the Council:

Dr. Scott Butterfield, Principal, Hayesville Elementary School, Salem, Oregon

The Native American Employment and Training Council was established under section 401(k)(1) of title IV of JTPA, as amended, to provide advice with respect to the implementation of JTPA programs for Native American youth and adults.

DATES: These appointments will be effective July 1, 1994, and will expire on June 30, 1996, contingent on the rechartering of the Native American Employment and Training Council as of July 1, 1995.

FOR ADDITIONAL INFORMATION CONTACT: Charles L. Atkinson, Acting Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, Room C–4524, Washington, DC 20210. Telephone: (202) 219–5904 (this is not a toll-free number)

Signed at Washington, DC this 10th day of June, 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–16317 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Insurance Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 40657). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the ACUC to evaluate the overall unemployment insurance program.

The ACUC recently, through requests for proposals, commissioned researchers to prepare reports on a variety of topics associated with the ACUC's deliberations on the reform of the unemployment insurance system. The purpose of this meeting is to provide a forum for presentation and discussion of the results of these research findings.

TIME AND PLACE: The meeting will be held from 8 a.m. to 4 p.m. on August 18, 1994 and from 8 a.m. to 3 p.m. on August 19, 1994 at the Ramada Inn,

1230 Congress Street, Portland, Maine. A lunch break is scheduled from 12:00 noon to 1:30 p.m. each day.

AGENDA: Conference participants will present and discuss the following commissioned reports:

1. Wage Insurance;
2. Unemployment Insurance and Consumption Smoothing;
3. The Evolution, Operation, and Effectiveness of the U.S. Employment Service;
4. The Effectiveness of the U.S. Employment Service;
5. The Interaction between Unemployment Insurance and Income Redistribution Programs: Evidence from the States during 1966–1989;
6. Unemployment Insurance Benefit Formulas and Part-time Work;
7. Immigration, Agriculture, and Unemployment Insurance;
8. The Incidence of the Unemployment Insurance Payroll Tax;
9. Improving Employer Compliance with Unemployment Insurance Tax Reporting Requirements;
10. The Sensitivity of Unemployment Insurance Costs to Variations in Key Program Parameters: Evidence from the G–7 Nations;
11. Impacts of Wage Subsidies on Participants and Nonparticipants;
12. Issues in Financing Unemployment Insurance; and
13. Administering the Unemployment Insurance System.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with disabilities in need of special accommodations should contact the Designated Federal official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S4231, Washington, DC 20210. She may be reached at (202) 219–7831 (this is not a toll-free number).

Signed at Washington, DC, this 30th day of June 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–16325 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NATA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than July 18, 1994, 10 days after publication in the **Federal Register.**

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director or OTAA at the address shown below not later than July 18, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C., this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Thomas & Betts Corporation; Electronics Division (Co.).	Inman, SC	06/13/94	NAFTA–00141	Injection molding and assembly of electronic connectors for computer and office equipment application.
Avery Dennison; Soabar Systems Division (Wkrs).	Gastonia, NC	06/13/94	NAFTA–00142	Gravure Printing, Tickets, labels and tags customized to customer's needs.
Byran's Gordon County Farm Co.; Sara Lee Corporation (Wkrs).	Calhoun, GA	06/14/94	NAFTA–00143	Prepared Meats such as luncheon meats (bologna, ham, turkey, salami, hot dogs, and corn dogs).
USA Classic, Inc. (Wkrs)	Counce, TN	06/14/94	NAFTA–00144	Clothing.
Kyrocera International, Inc.; Kyrocera America (Wkrs).	San Diego, CA	06/15/94	NAFTA–00145	Ceramic packages.
Theel Shake, Inc. (Wkrs)	Nailton, WA	06/16/94	NAFTA–00146	Cedar shakes and shingles.
International Paper; Container Division (UPIU).	Presque Isle, ME	06/20/94	NAFTA–00147	Corragated cardboard boxes.
Champion Parts Rebuilders; Northeast (IBEW).	Beech Creek, PA	06/20/94	NAFTA–00148	Automotive parts including self contained mechanisms i.e. alternators, distributors.
Safeway, Inc.; Supply Operation, Production (Wkrs).	Walnut Creek, CA	06/20/94	NAFTA–00149	Salsa, fruits, tuna, foodstuffs.
Baltimore Aircoil Co.; Pritchard, Inc. (Wkrs).	Merced, CA	06/20/94	NAFTA–00150	Fiberglass cooling tower parts.
Six Gun Cedar (Co.)	Quipauli, WA	06/21/94	NAFTA–00151	Red cedar shakes & shingles.
Woolrich, Inc.; Avis Facility (Co.)	Avis, PA	06/20/94	NAFTA–00152	Apparel; outerwear and sportswear.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Woolrich, Inc.; Blanchard Facility (Co.)	Blanchard, PA	06/20/94	NAFTA–00153	Apparel; sportswear and outerwear.
Woolrich, Inc.; Headquarters (Co.)	Woolrich, PA	06/20/94	NAFTA–00154	Apparel; sportswear and outerwear.
Woolrich, Inc.; Broomfield Facility (Co.)	Broomfield, CO	06/20/94	NAFTA–00155	Apparel; sportswear and outerwear.
Ampenol Corp.; Pyle National, Inc. (SEIU)	Chicago, IL	06/21/94	NAFTA–00156	Electrical connectors (high performance).
Martin Marietta; Government Electronic Systems (IFPTE).	Moorestown, NJ	06/23/94	NAFTA–00157	Electronic products for defense.
Oxford Industries, Inc.; Oxford Shirting Div. ( ).	Dawson, GA	06/23/94	NAFTA–00158	Men's and boy's dress and sport shirts.
McClure Manufacturing (Wkrs)	Elligay, GA	06/23/94	NAFTA–00159	Women's blue jeans.

Employment and Training Administration NAFTA–00051

Valeo Climate Control Corp., Fort Worth, TX; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment assistance on April 22, 1994, applicable to workers of Valeo Climate Control Corporation in Fort Worth, Texas. The certification did not apply to workers in the Rapid Product Development Group at the Fort Worth, Texas location of Valeo Climate Control Corporation. The Notice will be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification. New information from the company shows that worker separations from the Rapid Product Development Group of the Fort Worth, Texas facility of Valeo Climate Control Corporation were related to the shift in production from the subject plant to Mexico.

The Department's certification is amended to include workers in the Rapid Product Development Group.

The amended notice applicable to NAFTA–00051 is hereby issued as follows:

"All workers of Valeo Climate Control Corporation in Fort Worth, Texas, including workers in the Rapid Product Development Group, who become totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1994."

Signed at Washington, DC, this 24th day of June, 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–16321 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement 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 challenge and Advancement Advisory Panel (Expansion Arts Challenge Section) to the National Council on the Arts will be held on July 26, 1994 from 9: a.m. to 4 p.m. 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 9 a.m. to 9:45 a.m. for opening remarks and a general program overview and from 3:15 p.m. to 4 p.m. for a policy discussion.

The remaining protion of this meeting from 9:45 a.m. to 3:15 p.m. is 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 February 8, 1994, this session 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, TYY 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 of the Arts, Washington, DC 20506, or call 202/682–5439.

Dated June 29, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16300 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

Dance 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 Dance Advisory Panel (Dance Company Grants Section B) to the National Council on the Arts will meet on July 23, 1994 from 9:30 a.m. to 2:30 p.m. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 522b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee

Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 30, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16302 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; 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 Dance Advisory Panel (Dance Company Grants Panel A Section) to the National Council on the Arts will be held on July 18–22, 1994. The panel will meet from 9:00 a.m. to 8:00 p.m. on July 18–21 and from 10:00 a.m. to 1:30 p.m. on July 22 in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10:00 a.m. to 1:30 p.m. on July 22 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 8:00 p.m. on July 18–21 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 February 8, 1994, 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, TYY 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 M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 28, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16301 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Humanities; Meeting

June 30, 1994.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on August 1–2, 1994.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on August 1–2, 1994, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on August 1, 1994, will be as follows:

8:30–9:00 a.m.—Coffee for Council Members—Room 527
(Open to the Public)

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:00 a.m.

Education Programs—Room M–14
Fellowships Programs—Room 315
Public Programs—Room 415
Research Programs/Preservation and Access—Room M–07
State Programs—Room 507

10:00 a.m. until Adjourned—(Closed to the Public) Discussion of specific grant applications before the Council

2:00 p.m. until Adjourned—(Closed to the Public) Joint Meeting of the State and Public Programs Committees to review Frankel Prize nominees—Room 415

The morning session on August 2, 1994, will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30–9:00 a.m.)

Minutes of the Previous Meeting
Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Dates of Future Council Meetings
E. Budget Report
F. Legislative Report
G. Community Reports on Policy and General Matters
   1. Overview
   2. Education Programs
   3. Fellowships Programs
   4. Public Programs
   5. Research Programs
   6. Preservation and Access
   7. State Programs

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–16262 Filed 7–5–94; 8:45 am]

BILLING CODE 7536–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is

publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 13, 1994, through June 23, 1994. The last biweekly notice was published on June 22, 1994 (59 FR 32226).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 5, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 2, 1994

Description of amendment request: The proposed amendment would merge Toledo Edison Company into Cleveland Electric Illuminating Company. As described in the application, the company formed from the merger is intended to be renamed. Therefore, the licensee uses the nomenclature "NEWCO" as a temporary name of the combined operating company, and will provide the permanent name by supplemental letter. The amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with "NEWCO" as a licensee, (2) designate "NEWCO" as the owner of the Perry Nuclear Power Plant, Unit 1, and (3) make other administrative changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain a licensee.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Operating License are administrative and have no effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings and Safety Limits specified in the Technical Specifications remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative changes (48 FR 14864).

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Operating License are administrative and have no effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings and Safety Limits specified in the Technical Specifications remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative change (48 FR 14864).

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the Operating License are administrative and have no effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings and Safety Limits specified in the Technical Specifications remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is purely an administrative change (48 FR 14864).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: May 20, 1994

Description of amendment request: The proposed amendment would permit the licensee to use an alternate repair criteria (ARC), designated as the F* criteria. Use of the F* criteria would allow tubes with otherwise pluggable indications, to remain in service as long as the indications are below the designated minimum distance of the F* criteria. The F* criteria defines a length of 1.7 inches of undegraded expanded tube within the tubesheet as the minimum distance acceptable for implementing this ARC. Below the F* length, a circumferential tube defect can exist and the tube can remain in service. The proposed amendment will change the plugging limit definition and would exclude plugging steam generator tubes with indications that satisfy the F* criteria. The F* criteria maintains the structural integrity of the degraded tube as the primary pressure boundary and allows the tube to remain in service for heat transfer and core cooling.

This alternate repair criteria qualification is documented in Babcock & Wilcox Nuclear Technologies (BWNT) Topical Report BAW-10196 P Revision 1, "W-D4 F* Qualification Report", which is included as part of the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting qualification report for the subject criteria demonstrates that the presence of the tubesheet will enhance the tube integrity in the region of the tube-to-tubesheet roll expansions by precluding tube deformation beyond its initial expanded outside diameter. The resistance to a tube rupture is strengthened by the presence of the tubesheet in that region. The results of hardrolling of the tube into the tubesheet provides a mechanical leak limiting seal between the tube and the tubesheet. A tube rupture cannot occur because the contact between the tube and the tubesheet does not permit sufficient movement of tube material.

The type of degradation for which the F* criteria has been developed (cracking with a circumferential orientation) can theoretically lead to a postulated tube rupture event provided that the postulated through-wall circumferential crack exists near the top of the tubesheet. An evaluation including analysis and testing has been done to determine the resistive strength of the expanded tubes within the tubesheet. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the F* criteria.

The F* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. The tube rupture and pullout is fully bounded by the existing steam generator tube rupture analysis included in the UFSAR. The leakage testing of the roll expanded tubes indicates that for tube expansion lengths approximately equal to the F* distance, any postulated primary to secondary leakage from F* tubes would be insignificant. The proposed alternate repair criteria does not adversely impact any other previously evaluated design basis accident.

The leakage from an F* tube would be limited by the tube-to-tubesheet interface since this leak would occur below the secondary face of the tubesheet. Qualification testing and previous experience indicate that normal and faulted leakage is well below Technical Specification and administrative limits creating no increase in the consequences associated with tube rupture type leakages. The UFSAR analyzed accident scenarios are still bounding since the normal and faulted leak rates are well within the normal operating limit of 150 gallons per day. This conclusion is consistent with previous F* programs approved and used at other operating plants.

All of the design and operating characteristics of the steam generator and connected systems are preserved since the F* criteria utilizes the "as rolled" tube configuration that exists as part of the original steam generator design. The F* joint has been analyzed and tested for design, operating, and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. The potential for tube rupture is not increased from the original submittal as demonstrated in the qualification analyses and testing completed in the BWNT report.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

Implementation of the proposed F* criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. In the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore. This engagement length would prevent any interaction of the severed tube with neighboring tubes. Any hypothetical accident as a result of any tube degradation in the expanded region of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity will be maintained. Tube bundle leak tightness will be maintained such that any postulated accident leakage from F* tubes will be negligible with regard to offsite doses.

Therefore, there is not a potential for creating the possibility of a new or different type of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The use of the F* criteria has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Reg Guide 1.121 and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the F* criteria is any degradation indication in the tubesheet region, more than the F* distance from the secondary face of the tubesheet or the top of the last hardroll contact point which ever is further into the tubesheet. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code and Reg Guide 1.121 used in steam generator design. The F* distance has been verified by various testing to be greater than the length of the roll expanded tube-to-tubesheet interface required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. The protective boundaries of the steam generator continue to be maintained with the use of the F* criteria. A tube with the indication of degration previously requiring removal from service can be kept in service through the F* criteria. Since the joint is constrained within the tubesheet bore, there is no additional risk associated with the previously analyzed tube rupture event. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the UFSAR accident analyses.

Implementation of the alternate repair criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired by sleeves. Both plugs and sleeves reduce the RCS flow margin; thus, implementation of the F* criteria will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR or the Technical Specification Bases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: October 22, 1993

Description of amendment request: The proposed amendment would modify the Reactor Trip System (RTS) and Engineered Safety Feature (ESF) instrumentation surveillance requirements to incorporate the applicable changes specified in NRC-approved WCAP-10271 and related supplements. Four specific changes were approved by the Nuclear Regulatory Commission for the RTS and Engineered Safety Feature Actuation System analog channels. These changes are limited to the specific Reactor Protection System (RPS) channels evaluated in the WCAP (including all supplements) and are subject to the conditions specified by the NRC.

1. The surveillance or test frequency may be changed from monthly to quarterly.

2. The time allowed for a channel to be inoperable or out of service in an untripped condition may be changed from 1 hour to 6 hours.

3. The time a channel in a functional group may be bypassed to perform testing may be increased from 2 to 4 hours. This bypass time applies to either an inoperable channel when testing is done in the tripped mode or to the channel in test when testing is done in the bypass mode. The Allowed Outage Time for maintenance of a channel is 12 hours.

4. Routine channel testing may be performed in the bypassed condition instead of the tripped condition.

In addition, a number of editorial changes are made to improve clarity, and two-loop operating requirements are proposed to be deleted. Also, the surveillance test interval for RTS interlocks is proposed to be changed from monthly to once-per-refueling (about 18 months). Although not part of WCAP-10271, this was previously approved generically by NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The determination that the results of the proposed changes are within all acceptable criteria was established in the SER(s) [Safety Evaluation Report(s)] prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 issued by letters dated February 21, 1985, February 22, 1989 and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection System yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS and also results in a small increase in Core Damage Frequency (CDF) due to Engineered Safety Features Actuation System unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RPS instrumentation. This reduction is primarily attributable to testing in bypass and less frequent surveillance.

The reduction in [***] core melt frequency is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable.

Changes to Surveillance Test Frequencies for the Reactor Trip System Interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance, as currently required, only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability are verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. The change in surveillance requirement to at least once every 18 months does not therefore represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the Reactor Protection System.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated.

Implementation of the proposed changes affects the probability of failure of the RPS but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not result in a change in the manner in which the Reactor Protection System provides plant protection. No change is being made which alters the functioning of the Reactor Protection System (other than in a test mode). Rather the likelihood or probability of the Reactor Protection System functioning properly is affected as described above. Therefore,the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in a margin of safety as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes except those necessary to implement testing in bypass. Some existing instrumentation is designed to be tested in bypass and current technical specifications allow testing in bypass. Testing in bypass is also recognized by IEEE [Institute of Electrical and Electronics Engineers] Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed change for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore, since the other proposed changes do not alter the functioning of the RPS, the possibility of a new or different kind of accident from any previously evaluated has not been created.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

a. Less frequent testing will result in fewer inadvertent reactor trips and fewer actuations of Engineered Safety Feature Actuation System components.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: April 19, 1994

Description of amendment request: The proposed amendment would modify Specifications 3.4.9.3 and 3.4.11 to incorporate power operated relief valve (PORV) Technical Specification (TS) changes in accordance with the guidance in Generic Letter 90-06 as implemented in NUREG-1431 Improved Standard Technical Specifications (ISTS), with some exceptions and

modifications to reflect plant specific design features. Certain other TS sections would also be modified to address related TSs.

The proposed changes involve the details of (a) limiting conditions of operation, and (b) surveillance testing for equipment needed to protect the reactor vessel from overpressure conditions. This equipment includes PORVs and their associated block valves, charging pumps, reactor coolant system (RCS) vent, accumulators, and the overpressure protection system. Numerous administrative changes are also proposed, such as renumbering sections, spelling out mathematical symbols, changes in nomenclature for consistency, and relocating sentences and paragraphs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes consolidate the power operated relief valve requirements into Specifications 3.4.9.3 and 3.4.11 which generally adopt the new Improved Standard Technical Specifications of NUREG-1431 to address the concerns identified in Generic Letter 90-06 except for those changes required to reflect plant specific design features. These changes are proposed to enhance safety and improve the reliability of the PORVs and block valves. Since the proposed changes augment or preserve the requirements contained in the current technical specifications, we have concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to the PORVs or their setpoints. These changes do not delete any function previously provided by the PORVs nor has the probability of inadvertent opening been increased. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of these changes. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes have been incorporated to enhance safety and improve the reliability of the PORVs and block valves to ensure their availability when called upon to perform their function. These changes do not affect the manner by which the facility is operated or involve a change to equipment or features which affect the operational characteristics of the facility. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis. The staff notes that a significant effort has been made by the NRC and by industry over the last several years to improve and tighten the TS requirements for overpressure protection systems. These efforts are documented in Generic Letter 90-06 and NUREG-1431. The changes proposed by the licensee appear to result in TSs that are significantly more comprehensive and restrictive than those now existing for Beaver Valley Units 1 and 2, and, therefore, should help to reduce the probability of an accident. The staff disagrees with the licensee's claim that the changes do not affect the manner by which the facility is operated (consideration number 3 above). However, the staff believes that the proposed TS changes require more restrictive operation (such as more careful control of the number of charging pumps which can inject into the RCS) and do not involve a significant reduction in a margin of safety. Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 9, 1994

Description of amendment request: The proposed amendment would revise Technical Specification section 4.8.1.1.2 to replace the current qualitative examination of new diesel generator fuel oil for water/sediment and particulate contamination with a quantitative examination for the same properties.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated since the diesel generator availability and reliability is not being changed. The quantitative acceptance criteria for new fuel oil is not being changed. Diesel generator performance will therefore not be changed due to the proposed revision to SR [surveillance requirement] 4.8.1[.1].2.d.1.d. The diesel generator will continue to provide sufficient electrical power to ESF [engineered safety feature] systems. The ESF systems will continue to function, as assumed in the safety analyses, to ensure that the fuel, reactor coolant system, and containment design limits are not exceeded.

Therefore, this changes will not increase the probability or consequences of an accident previously evaluated due to the continued availability and reliability of the emergency diesel power source.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the method of operating the plant. This change will continue to ensure that the addition of new fuel oil complies with accepted standards regarding fuel oil quality. Since design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new failure mode has been created. As a result, an accident which is different than any already evaluated in the Updated Final Safety Analysis Report will not be created due to this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not reduced because the emergency diesel generators will continue to provide sufficient capacity, capability, redundancy, and reliability to ensure availability of necessary power to ESF systems. The ESF systems will continue to function, as assumed in the safety analyses, to ensure that the fuel, reactor coolant systems, and containment design limits are not exceeded. The replacement of the clear and bright qualitative examination with the proposed quantitative test to determine the actual water/sediment and particulates will ensure that new fuel oil meets the required limits for these properties prior to addition to the storage tank, therefore assuring that the quality of the stored fuel is unaffected by the addition of new fuel.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

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NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: February 16, 1994

Description of amendment request: The proposed amendment would delete the Appendix B Section 4.2.2 requirement to perform infrared aerial photography every other year.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will delete from Facility Operating License No. NPF-73 the Appendix B Section 4.2.2 requirement to perform infrared aerial photography every other year. The acceptance limit which forms the licensing basis for this technical specification is related to environmental impact and has no impact on the margin of safety, accident analysis, or other design basis impacting the margin of safety. No increase in adverse environmental impact has been identified over that previously identified in the Final Environmental Statement - Operating License Stage, environmental impact appraisals, or in any decisions of the Atomic Safety and Licensing Board. The Final Environmental Statement concluded, based on a model of combined drift from Units 1 and 2, that no adverse impacts to sensitive species of natural vegetation or to sensitive species of crops were expected. The staff also examined infrared aerial photographs taken from 1975 through 1983 and found no injury to vegetation from cooling tower drift in the vicinity of Unit 1.

Continued terrestrial monitoring was performed for Beaver Valley Unit 2 by infrared aerial photography in 1986, 1988, 1990, and 1992. The results as provided in the Annual Environmental Reports Non-Radiological concluded, "Based on interpretation of the infrared photographs and field verification, there is no evidence to suggest that the BVPS [Beaver Valley Power Station] cooling towers are causing vegetation stress."

Based on the compilation of the infrared aerial photography performed for both BV-1 and BV-2, deletion of this terrestrial monitoring requirement will have no impact on the environment or the operation of the plant. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The Appendix B Section 4.2.2 requirement to perform infrared aerial photography reflects a commitment described in Final Environmental Statement Section 5.14.1. Therein it is stated that the preoperational monitoring studies for BV-2 are based primarily on the BV-1 operational monitoring programs. "Results of these studies have shown that there were no BV-1 operational impacts on flora, thus, the only terrestrial monitoring planned for BV-2 is continued infrared aerial photography every other year. The photographs will be compared with preoperational photographs of the BV-2 area, nd any signs of injury as a result of salt drift and other sources will be checked. The details of this terrestrial monitoring program will be specified in the Environmental Protection Plan that will be included in Appendix B of the operating license." The subject of this concern is the impact of salt and water drift on area vegetation including sensitive agricultural crops. From the standpoint of soil salinization (the effects of the accumulation of salts in the soil), described in the Environmental Report-Operating License Stage Section 5.3.3, no appreciable impact resulting from operation of the natural draft cooling towers is anticipated. This is based on the average rate of precipitation of 36.2 inches annually which greatly reduces the potential for accumulation of salt in the soil. The terrestrial monitoring program has been performed in accordance with the Environmental Protection Plan and has provided additional verification that operation of both cooling towers has not produced any evidence of vegetation stress. The proposed change does not introduce any new mode of plant operation or require any physical modification to the plant, therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Infrared aerial photography surveillance does not affect safety systems and/or systems important to safety. Terrestrial monitoring is not used in any accident analysis and does not provide a basis for evaluating the radiological consequences of an accident. Deleting the requirement to perform infrared aerial photography will not result in any environmental impact from operation of the cooling tower and will not affect the operation of the cooling tower. The operating history of both the BV-1 and the BV-2 cooling towers has demonstrated that there is no evidence of vegetation stress in accordance with the results obtained from the infrared aerial photography and other associated methods of environmental monitoring. Therefore, based on the above, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: May 23, 1994

Description of amendment request: The amendment will revise Technical Specification (TS) 3.5.2 for Emergency Core Cooling Systems (ECCS) by removing the option that allows High Pressure Safety Injection (HPSI) Pump 1C to be used as an alternative to the preferred pump for subsystem operability. HPSI pump 1C is an installed spare which is not required to be maintained in an operable status, and this change is being requested to upgrade the ECCS operability requirements consistent with actual plant operating needs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment will remove the option of using High Pressure Safety Injection Pump 1C (HPSI-1C) to satisfy, in part, the Emergency Core Cooling System (ECCS) operabilityrequirements specified in Limiting Condition for Operation (LCO) 3.5.2. HPSI-1C is an installed spare pump that is not required to be operable unless it is being used in place of the preferred B-train ECCS high pressure pump. The required functional response of the ECCS or the required availability of the minimum equipment necessary to accomplish the ECCS safety function will not be changed by removing the spare pump option from the Technical Specifications.

The calculated cooling performance of the St. Lucie Unit 1 ECCS during postulated accidents conforms to the criteria set forth in 10 CFR 50.46 and the ability to achieve this required performance, including

considerations of single-failure criteria, is independent from optional use of HPSI-1C. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. Eliminating the option for the licensee to utilize HPSI-1C in place of the preferred B-train ECCS high pressure pump does not involve the addition of new or different types of equipment to the previously analyzed ECCS. Equipment important to safety will continue to perform their safety functions as previously analyzed and will not be affected by this proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Removing the option to employ the installed spare HPSI pump 1C in lieu of the preferred B-train pump to determine ECCS operability only removes an operational flexibility that has rarely been used by the licensee. St. Lucie Unit 1 accident analyses do not take credit for an installed spare pump, the minimum complement of safety injection equipment required for safe operation of the facility and that is required by LCO 3.5.2 is not changed, and the results of plant accident and transient analyses are not influenced by this proposed amendment. The proposed change does not alter the bases for any Technical Specification related to the establishment of, or maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 23, 1994

Description of amendment request: The proposed amendments will relocate the seismic monitoring instrumentation Limiting Conditions for Operation, Surveillance Requirements, and the associated tables contained in Technical Specifications 3.3.3.3, 4.3.3.3.1 and 4.3.3.3.2 to the Updated Final Safety Analysis Report. The basis for this request is consistent with NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants" and with the "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, "published in the Federal Register (58 FR 39132) dated July 22, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature in that the specifications for operation and surveillance of the Seismic Monitoring Instrumentation system will be relocated from Appendix A of the facility operating license to the Updated Final Safety Analysis Report for St. Lucie Unit 1 and Unit 2. Changes to the system will be controlled by 10 CFR 50.59 and the safety analysis report is required to be updated pursuant to 10 CFR 50.71(e). Relocation of these requirements to the UFSAR is consistent with the NRC "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" published in the Federal Register (58 FR 39132) dated July 22, 1993.

Seismic monitoring instrumentation is not an accident initiator nor a part of the success path(s) which function to mitigate accidents evaluated in the plant safety analyses. The proposed technical specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do the changes alter any assumptions or conditions in any of the plant accident analyses. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to relocate the existing Technical Specification requirements for Seismic Monitoring Instrumentation to the Updated Final Safety Analysis Report will not change the physical plant or the modes of plant operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature in that operating and surveillance requirements for the Seismic Monitoring Instrumentation system will be relocated from Appendix A of the facility license to the Updated Final Safety Analysis Report for St. Lucie Unit 1 and Unit 2. Seismic monitoring instruments are not used to actuate safety-related equipment, provide interlocks, or otherwise perform plant control functions. The instruments are used to record the magnitude of a seismic event, should it occur. Conditions evaluated in plant accident and transient analyses do not involve seismic instruments. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: May 23, 1994

Description of amendment request: The proposed amendment revises Technical Specifications Section 3/

4.7.1.1, Turbine Cycle, Safety Valves, to delete a specific reference to the 1974 edition of the ASME Code and refer to testing in accordance with Technical Specification 4.0.5, the In-Service Inspection and In-Service Testing Specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1)Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the main steam code safety valves will continue to be tested in accordance with current NRC requirements as implemented through 10 CFR 50.55a. The NRC specifies the ASME code requirements for a facility through revisions to 10 CFR 50.55a and through the review and approval of the plant specific in-service testing plan for pumps and valves at the beginning of each in-service inspection interval.

The probability or consequences of an accident are not increased because testing of the main steam safety valves is in accordance with the appropriate NRC requirements.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any previously evaluated.

The use of this modified specification can not create the possibility of a new or different kind of accident from any previously evaluated since there is no physical change to the facility or the set points for the main steam safety valves. The valves will be tested in accordance with current requirements. No new failure mode is introduced due to the change because no plant change is being made and main steam safety valve test methods are consistent with the endorsed edition of the ASME Code.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The existing technical specification references an outdated version of the ASME Code. This change corrects the reference to Specification 4.0.5 which ensures that in-service testing of ASME Code Class 1, 2, and 3 pumps and valves will be performed in accordance with a periodically updated version of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a.

Safety valve setpoints or tolerances are not changed by this proposal. Therefore, the modified specification corrects the ASME Code reference and does not involve a significant reduction in a margin of safety.

Based on the above, we have determined that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 27, 1992, as supplemented on January 6, and May 27, 1994.

Description of amendment request: The proposed amendment would revise the limiting conditions for operation and surveillance requirements for primary containment integrity, secondary containment integrity and other systems and equipment of Technical Specifications Section 3.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect the FSAR safety analyses involving these system.

Definitions

The revisions to Definition 15, "Primary Containment Integrity" and Definition 16, "Secondary Containment Integrity" agree with the corresponding definitions of the STS. These changes are administrative in nature in that they only clarify the requirements for containment integrity and the appropriate means of isolating penetrations. These changes do not affect the operation or function of the containment isolation systems and, therefore, do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Primary Containment Integrity

The revision to TS section 3.7.A, "Primary Containment Integrity", only adds a specific requirement to restore primary containment integrity within 1 hour or commence a plant shutdown. These actions are consistent with the actions specified in STS for primary containment integrity. No changes to the primary containment boundary or the requirements for primary containment integrity have been proposed. Therefore, this change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

Primary Containment Power Operated Isolation Valves

The revisions to TS section 3.7.B, "Primary Containment Power Operated Isolation Valves" are editorial in nature in that the wording has only been changed to be consistent with the STS requirements for primary containment isolation valves. These changes do not affect the function of the valves, the requirements to isolate a penetration with an inoperable containment isolation valve or the actual methods of isolation. Penetrations are still required to be isolated within 4 hours in a manner that cannot be adversely affected by a single active failure. Therefore, these changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Drywell Average Air Temperature

The addition of limits, actions, and surveillance requirements for drywell average air temperature are intended to ensure that the initial assumptions in the DAEC Primary Containment Response Analysis to a DBA remain valid. The temperature limit (135°F) corresponds to the initial drywell average temperature assumed for this analysis in the UFSAR. The specified limits, actions and surveillance requirements are consistent with STS. The addition of this limit to the TS will not affect the actual operation or function of any equipment but will ensure that the containment analysis remains valid. Therefore, the addition of this limit will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Pressure Suppression Chamber-Reactor Building Vacuum Breakers

The changes to TS section 3/4.7.D only provide additional detail and operability requirements for the pressure suppression chamber-reactor building vacuum breakers. These additional details are consistent with the requirements of STS. Specifying separate operability requirements for vacuum breakers inoperable for opening (but known to be closed), or open better reflects the dual functions of these valves (vacuum relief and containment isolation). The additional surveillance requirement will better ensure that the containment isolation function of these valves is maintained. The rewording of existing surveillances only clarifies current requirements. These changes do not affect the actual function, setpoints, or number of valves required to be operable and therefore do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Drywell-Pressure Suppression Chamber Vacuum Breakers

The changes to TS section 3/4.7.E, only provide additional detail and operability requirements for the drywell-pressure suppression chamber vacuum breakers. These additional details are consistent with the requirements of STS. Specifying separate

operability requirements for vacuum breakers inoperable for opening (but known to be closed) or open better reflects the dual functions of these valves. The additional requirement to verify that each vacuum breaker is closed at least once per week will better ensure that the isolation boundary between the drywell and torus is maintained. The elimination of the requirement to exercise all operable drywell-pressure suppression chamber vacuum breakers upon determination that a vacuum breaker is inoperable for opening will not affect the reliability of these vacuum breakers. The only valid reason to exercise the operable vacuum breakers is if a common mode failure is suspected. We have reviewed the maintenance history of these valves and have not identified any instance of common mode failures. Conditional testing of these changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Main Steam Isolation Valve Leakage Control System (MSIV-LCS)

The change to TS Section 3/4.7.F, "MSIV-LCS", deletes the unnecessary and potentially non-conservative conditional surveillance testing of the redundant MSIV-LCS subsystems. Although the proposed change will reduce the amount of testing of the MSIV-LCS, reliability of these systems would not be decreased and the necessary assurance that the alternate systems/subsystems/components will operate when needed is provided by the ASME Section XI IST Program.

The possibility of human error will decrease with reduced testing. Human error such as a misalignment of valves after the system is returned to its normal configuration following testing and the misdirection of the operators attention from monitoring and directing plant operations is less likely to occur if this testing is eliminated. Additionally, reducing the scope and frequency of surveillance testing will decrease the probability of equipment failure (due to testing) which could require plant shutdown. Therefore, this change will not increase the probability of occurrence or consequences of an accident previously evaluated.

Suppression Pool Level and Temperature

The changes to TS section 3/4.7.F, "Suppression Pool Level and Temperature", are intended to clarify these requirements and make them more consistent with STS. The revision to the applicability statement which deletes the requirement for suppression pool level and temperature to be within the specified limits during work which has the potential to drain the vessel is in accordance with STS. Suppression pool level and temperature limits ensure that the suppression pool has the capability of acting as a heat sink for design basis events but are not appropriate or applicable during the refueling or cold shutdown conditions. No changes have been made to the actual suppression pool temperature or level limits and therefore, the assumptions made in the accident and transient analyses remain valid. These limits are consistent with the STS. The revisions to the surveillance requirements are also intended to improve clarity and consistency with STS. The deletion of the requirement to monitor suppression pool water temperature every 5 minutes during relief valve operation is appropriate in that plant operating and emergency operating procedures already specify what actions are to be taken when suppression pool average water temperature increases above 95°F including initiation of suppression pool cooling. Monitoring pool temperature every 5 minutes during these events is not necessary and is redundant to other actions. Therefore, these changes will not significantly increase the probability of occurrence of the consequences of an accident previously evaluated.

Containment Atmosphere Dilution

The revisions to the applicability of TS section 3.7.H, "Containment Atmosphere Dilution", requiring the containment atmosphere dilution system to be operable only when the reactor is in power operation and the primary containment is required to be inerted will not significantly increase the probability or consequences of an accident previously evaluated because the CAD system can only function when the containment is inerted. The function of the CAD system is to inject nitrogen into the containment after a LOCA and ensure the containment remains inerted. Drywell inspections performed after plant startup and prior to plant shutdown require that the primary containment be de-inerted for personnel access. Therefore, CAD system operability is not required during these inspections. No changes to the actual function or purpose of the CAD system are proposed.

Oxygen Concentration

The changes to TS section 3/4.7.1, "Oxygen Concentration" are administrative in that they only clarify the requirement that both the suppression chamber and the drywell must have oxygen concentrations less than 4 [percent] by volume. The revisions to the surveillance requirements are consistent with STS. Decreasing the frequency of verification of oxygen concentration from twice per week to once per week is in accordance with STS and reflects the fact that during power operation, the containment is inerted and slightly pressurized such that air (oxygen) cannot leak into the containment. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

Secondary Containment

The deletion of the requirement to operate the SGTS immediately after a secondary containment violation is identified will not affect the reliability of the secondary containment in that containment integrity is normally fully restored immediately after a violation is identified. The testing of the SGTS involves insertion of a Group III containment isolation signal and is only appropriate if the restoration of secondary containment involves a temporary or new secondary containment boundary. These modifications to a secondary containment boundary, however, would require that the SGTS be operated as part of post modification testing. Deleting the requirement for the SGTS to be operated after minor secondary containment violations will reduce the possibility of human error (such as misalignment of valves after the system is returned to its normal configuration) due to reduced testing. Operation of the SGTS after a secondary containment violation is not required by STS.

Revision of the definition of calm wind conditions will not affect the reliability or availability of the secondary containment or SGTS. An engineering evaluation on the effects of wind speed and direction on the ability of the SGTS to maintain 1/4" vacuum in secondary containment has been performed. The results indicate that while wind effects can be seen on individual instruments, there is minimal effect on the average instrument readings with wind speeds up to 15 mph. A discussion of this evaluation has been added to the Bases of TS section 3.7. Therefore, these changes will not significantly increase the probability or the consequences of an accident previously evaluated.

Secondary Containment Automatic Isolation Dampers

The addition of operability requirements, actions and surveillance requirements for secondary containment isolation dampers better ensures the integrity and isolation capability of the secondary containment. The new specifications are consistent with the requirements of the STS. The actual function or operation of the secondary containment isolation valves/dampers will not be affected. The appropriate valves/dampers will be incorporated in plant procedures that are subject to the change control provisions of TS. Therefore, these changes will not increase the probability of occurrence or consequences of an accident previously evaluated in the TS.

Standby Gas Treatment System

The change to the output requirements of the inlet heaters for each train of the SGTS from 11 kw to 22 kw better ensures that these heaters (and the SGTS) can perform their design function. The 22 kw output requirement ensures that the inlet air humidity does not exceed the 70 [percent] humidity specified in the UFSAR. This change does not affect the actual operation of the heaters or the SGTS.

The requirement to demonstrate the HEPA filter uniform air distribution after HEPA filter replacement or after structural maintenance on the filter system housing (rather than annually) will not decrease the reliability of the SGTS. The air flow test will be performed after work or modifications which have the ability to disrupt the system geometry or result in potential flow blockage.

Revising the shutdown LCO requirement in the various specifications from requiring the plant to be in Cold Shutdown in 24 hours to requiring Hot Shutdown in 12 hours and Cold Shutdown (or other condition not requiring equipment operability) in the following 24 hours is consistent with STS and the shutdown requirements in TS section 3.5. This new requirement will allow the reactor to be shutdown in a more controlled manner and will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The revisions to the Bases are administrative in that they only reflect the

changes to the individual specifications described previously in this section or correct minor discrepancies. All changes are consistent with the applicable specifications.

(2) The proposed amendment will not increase the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

As described in the above response to question t1, none of the proposed changes alters the design of the plant or equipment or the plant's transient response. The changes to the definitions and limiting conditions for operation applicable to TS section 3.7 are consistent with STS and better ensure that equipment assumed to be operable in our accident analysis will be operable upon demand. The addition of limiting conditions for operation for drywell average temperature and secondary containment isolation valves will better ensure that the assumptions in our accident analysis remain valid.

The changes to the surveillance requirements are consistent with the STS. Those systems required to mitigate accidents evaluated in the UFSAR will still be operable and available.

The reduction in conditional surveillance testing of certain systems and equipment will reduce the probability of equipment failure as a result of excessive testing or due to human error.

(3) The proposed amendment will not involve a significant reduction in a margin of safety for the following reasons.

The revisions to the limiting conditions for operation in Chapter 3.7 of the TS will not invalidate the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. These changes provide more specific guidance only and are in accordance with the STS. Extending the time period within which the DAEC must achieve Cold Shutdown conditions will permit increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risks of unexpected operational transients.

Additional surveillance testing for certain instrumentation and systems will provide additional assurance that these systems will be available when needed.

Elimination of unnecessary or conditional surveillance testing will not reduce the minimum necessary equipment operability requirements or equipment reliability. Elimination of the redundant testing will reduce equipment failure due to excessive testing or human error.

In summary, the proposed administrative changes do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 27, 1974

Description of amendment request: The amendment would temporarily allow the Operations Manager to not have a senior reactor operator (SRO) license for Millstone 3, providing other conditions are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:...The proposed change does not involve an SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only an administrative control, which was based on the existing industry guidance in ANSI N18.1-1971, that recommended the Operations Manager hold a SRO license. The current guidance in Section 4.2.2 of ANSI/ANS-3.1-1987 recommends, as one option, that the Operations Manager have held a license for a similar unit and the Operations Middle Manager hold a SRO license. The Operations Middle Manager position does not exist at NNECO [Northeast Nuclear Energy Company]. Therefore, the proposed change requests an exception to ANSI N18.1-1971 to allow use of ANSI/ANS-3.101987 in a limited circumstance. Specifically, the proposed revision to Technical Specification 6.3.1 would temporarily allow the Operations Manager to have held a SRO at a PWR [pressurized water reactor] other than Millstone Unit No. 3. The proposed revision would be in effect for the period ending three years after the Staff's approval for this request.

The proposed exception to ANSI N18.1-1971 will allow at least one of the Operations Assistants (instead of a Operations Middle Manager) to hold, and continue to hold, a SRO license, if the Operations Manager does not hold a license. The proposed change includes the requirement if the Operations Manager does not hold a SRO license at Millstone Unit No. 3, he shall have held a license for a similar unit in accordance with Section 4.2.2 of ANSI/ANS-3.1-1987. For those areas of knowledge that require a SRO license, at least one of the Operations Assistants hold a SRO license and provides technical guidance normally required by the Operations Manager.

The proposed change does not alter the design of any system, structure, or component. It does not change the way any plant systems are operated. It does not reduce the knowledge, qualifications, or skills of any operator on watch, and does not affect the way the Operations Department is managed by the Operations Manager in maintaining the effective performance of his personnel and to ensure the plant is operated safely and in accordance with the requirements of the Operating License.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. In this case, by having previously held a SRO license for a similar unit, he will have gained the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators.

The proposed change does not weaken the supervisory chain that presently exists in the Operations Department. All Control Room operators will continue to be supervised by the licensed Shift Supervisor.

In summary, the proposed change does not affect the ability of the Operations Manager to provide the plant oversight required of his position. In addition, it does not have any [e]ffect on the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to Technical Specification 6.3.1 does not affect the design or function of any plant system, structure, or component. It does not affect, in any way, the performance of NRC licensed operators, nor does it change the way any plant equipment is operated. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC SRO license. The proposed change to Technical Specification 6.3.1 ensures that the Operations Manager will be a knowledgeable and qualified individual. The proposed change does not introduce any new failure modes.

3. Involve a significant reduction in a margin of safety.

The proposed change involves only an administrative control which is not related to the margin of safety as defined in the technical specifications. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. All Control Room operators will continue to be supervised by personnel who hold a SRO license.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: May 31, 1994

Description of amendment request: This amendment will change the frequency for monitoring the Spray Pond ground water level from once per month to once every six months in Technnical Specification Requirement 4.7.1.3.c for each Susquehanna unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to extend the monthly surveillance interval for Spray Pond ground water level measurement to biannual does not affect the the probability or consequences of an accident previously evaluated. The safety analysis performed for this change concludes that the ground water level is stable, predictable, and significantly below the acceptance criteria established in the Technical Specifications. Thus, less frequent monitoring of the ground water level does not increase the probability that the Spray Pond will become inoperable due to rising ground water levels or the probability of any accident scenarios associated with Spray Pond inoperability. The Technical Specification change will not impact the function or the method of operation of plant systems, structures, or components. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the FSAR are not increased by the change.

II. This proposal does not create the possibility of a new or different kind of accident or from any accident previously evaluated.

The proposed Technical Specification change to extend the monthly surveillance interval for Spray Pond ground water level measurement to biannual does not create the possibility of a new or different kind of accident or from any accident previously evaluated. The proposed change dies not affect systems, structures, or components (SSCs) or the operation of the SSCs; and therefore does not create the possibility of a new or different kind of accident.

III. This change does not involve a significant reduction in a margin of safety.

The proposed Technical Specification change to extend the monthly surveillance frequency to biannual does not reduce the margin of safety. The ground water level in the vicinity of the Spray Pond has been proven to be stable and predictable through twelve years of monthly data collection. This data has shown the highest ground water levels (still considerably lower than the Technical Specification limit) to occur in the months of April and October. Therefore, surveillance of the ground water level at the observation sites during April and October will adequately monitor this aspect of the Spray Pond operability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 25, 1994

Description of amendment request: Salem is in the process of upgrading the Radiation Monitoring System. This upgrade will involve a replacement on many of the existing radiation monitors. The proposed change modifies Tables associated with Technical Specifications 3/4.3.3.1 Radiation Monitoring Instrumentation, 3/4.3.3.8 Radioactive Liquid Effluent Monitoring Instrumentation, and 3/4.3.3.9 Radioactive Gaseous Effluent Monitoring Instrumentation. The proposed change relocates the Salem specific radiation monitor numbers from the table to a cross reference in the Bases. No required radiation monitoring functions are being changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [This proposal does not involve] a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to relocate the Salem specific radiation monitor numbers to the Bases is administrative. There are no modifications or changes in operating conditions associated with the proposed changes. Providing a more accurate description of a referenced radiation monitor in the note is editorial. The proposed changes do not affect the probability of occurrence or the consequences of accidents identified in the UFSAR. No accident precursors are being generated by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. [This proposal does not create] the possibility of a new or different kind of accident.

The proposed changes to relocate the Salem specific radiation monitor numbers to the Bases are administrative. The change to the note on Table 3.3-6 is editorial to provide a more accurate description of the required radiation monitor. There are no modifications or changes in operating conditions associated with the proposed changes. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. [These changes do not involve] a significant reduction in a margin of safety.

The Technical Specification operability requirements for the radiation monitors are not being changed. Relocating the Salem specific radiation monitor numbers to the Bases will not change any requirements for the radiation monitors. The change to the note on Table 3.3-6 is editorial to provide a more accurate description of the required radiation monitor. Therefore, the changes to the surveillance frequencies do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 23, 1994, as supplemented June 15, 1994

Description of amendment request: The proposed amendment would revise the Ginna Station Technical Specification (TS) 3.1.4 regarding allowable primary coolant levels of specific activity. The limit for I-131 dose equivalent of iodine activity in the reactor coolant would be increased from 0.2 to 1.0 micro Ci/gm. The limit for total specific activity of the reactor coolant would be increased from 84 to 100/E micro Ci/gm, where E is the average beta and gamma energies per disintegration in Mev. Both increased allowable levels are consistent with NUREG-1431 "Standard Technical Specifications, Westinghouse Plants, September 1992," and NUREG-0800 "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (Section 15.6.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any accident initiators and therefore the probability of any accident is not increased. Consequences of the changes are analyzed and shown acceptable in the [Westinghouse LOFTTR2 Analysis of Potential Radiological Consequences Following a Steam Generator Tube Rupture at the R.E. Ginna Nuclear Power Plant] analysis, WCAP-11668, Section III.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve no physical modifications to the plant; therefore, no new accident can be postulated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety, as no margin of safety is reduced by the proposed changes, as shown in WCAP-11668.

Based upon the above information, it has been determined that the proposed changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Walter R. Butler

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 6, 1994

Description of amendment request: The proposed amendment would merge Toledo Edison Company into Cleveland Electric Illuminating Company. As described in the application, the company formed from the merger is intended to be renamed. Therefore, the licensee uses the nomenclature "NEWCO" as a temporary name of the combined operating company, and will provide the permanent name by supplemental letter. The amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with "NEWCO" as a licensee, (2) designate "NEWCO" as the owner of the Davis-Besse Nuclear Power Station, Unit 1, and (3) make other associated changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain a licensee.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, indicating that the proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The proposed changes are administrative and have no direct affect on any plant systems. All Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The proposed changes do not alter the source term, containment isolation, or allowable radiological consequences. The proposed changes are administrative and have no direct effect on any plant systems.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are created. The proposed changes are administrative and have no direct effect on any plant systems. The changes do not affect the reactor coolant system pressure boundary and do not affect any system functional requirements, plant maintenance, or operability requirements.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators are created. The proposed changes are administrative and have no direct effect on any plant systems. The changes do not affect the reactor coolant system pressure boundary and do not affect any system functional requirements, plant maintenance, or operability requirements.

3. Not involve a significant reduction in the margin of safety because the proposed changes do not involve new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed changes are administrative and have no direct affect on any plant systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: May 20, 1994

Description of amendment request: The proposed amendment would remove Core Spray (CS) High Sparger Pressure Instrumentation from the Vermont Yankee Technical Specifications for Emergency Core Cooling System (ECCS) Actuation Instrumentation. In addition, an unrelated administrative change is also proposed.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to remove the Core Spray High Sparger Pressure Instrumentation from the Technical Specifications for ECCS Actuation Instrumentation is consistent with NRC requirements concerning this instrumentation. This instrumentation is considered NNS [nonnuclear safety] and performs a local monitoring and alarm function only. In addition, the NRC has recently approved the removal of Core Spray Sparger Break Detection Instrumentation from the Technical Specifications of another BWR [boiling water reactor] with a similar situation.

The CS Sparger Piping is inspected every refueling outage to verify its integrity. No cracks in the CS Sparger piping have been identified since the first inspection in 1980. CS Sparger Piping integrity is still assured. The instrumentation systems to be removed from the ECCS Actuation Instrumentation Technical Specifications do not perform any automatic control or trip function. In addition, this instrumentation does not provide information that is required to permit the control room operator to take manual actions that are required for safety systems to accomplish their safety functions for design basis accident events.

The proposed change does not result in any system hardware modification, function change or new plant configuration. The requested change to ECCS Actuation Instrumentation does not impact any FSAR [Final Safety Analysis Report] safety analysis involving the ECCS or Protection Systems. These monitoring functions are not contributors to the initiation of accidents.

The administrative changes to correct typographical errors on Tables 3.2.1 and 4.2.1 will have no affect on plant hardware, plant design, safety limit setting or plant system operation and therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

Therefore, it is concluded that there is not a significant increase in the probability or consequence of an accident previously evaluated.

2. The function of the Core Spray High Sparger Pressure Instrumentation to be removed from the Technical Specifications is for local indication and alarm only. These functions are not necessary for operators to accomplish any safety functions.

The proposed change does not involve any change in hardware, function, Technical Specification trip setpoints, plant operation, redundancy, protective function or design basis of the plant. There is no impact on any existing safety analysis or safety design limits. Core Spray High Sparger Pressure Instrumentation functions do not initiate nuclear system parameter variations which are considered potential initiating causes of threats to the fuel and the nuclear system process barrier.

As discussed above, the proposed administrative change only corrects typographical errors concerning equipment identification numbers. This change doe not affect any equipment and it does not involve any potential initiating events that would create any new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change to remove the Core Spray High Sparger Pressure Instrumentation from the Technical Specifications for ECCS Actuation Instrumentation does not affect any existing safety margins. This equipment is NNS and performs a local indication and alarming function only. The original intent of this detection system was because the first BWR plants had only the CS System for long-term core cooling. Later, plants like VY [Vermont Yankee] were provided with Low Pressure Coolant Injection (LPCI) Systems in addition to CS.

Existing Technical Specification requirements for automatic trip functions are unaffected. Failure of the Core Spray High Sparger Pressure Instrumentation does not preclude the ability of the CS System to perform its safety function to mitigate the consequences of accidents or of any other safety system to accomplish its safety functions. Proper ECCS functioning post-accident is not relied upon by NNS alarming functions but by such systems as safety related reactor level indication.

The CS Sparger Piping is inspected every refueling outage to verify its integrity. No cracks in the CS Sparger piping have been identified since the first inspection in 1980. The removal from the Technical Specifications has no affect on the bases of Protective Instrumentation which is to operate to initiate required system protective actions. The Core Spray High Sparger Pressure Instrumentation does not perform any safety function.

As discussed above, the proposed administrative change which corrects typographical errors does not affect any equipment involved in potential initiating events or safety limits. [***].

Based upon the above, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 18, 1992, modifications submitted June 25 and July 28, 1992, and December 6, 1993

Description of amendment request: On December 6, 1993, the licensee submitted a significant modification to its original request of March 18, 1992 (April 19, 1992 (57 FR 12349)). The modified request would amend the Technical Specifications (TS) to provide two surveillance tests to determine the operability of the catalyst beds in the containment atmospheric control (CAC) system. One test compares hydrogen content in the influent to the hydrogen content in effluent process streams to assure the catalyst is operating. The second test measures the temperature profile in the catalyst bed to ensure that sufficient catalyst remains available for the recombination process during postulated accident conditions. Since the original proposal has been significantly changed, the staff is issuing a new notice and proposed no significant hazards consideration determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any changes in the design or operation of the hydrogen recombiners, which are accident mitigation systems. The proposed change revises surveillance requirements to ensure that existing equipment will perform as designed in response to postulated events. The proposed change does not, therefore, involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any changes in the design or operation of existing equipment, and does not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The proposed change increases surveillance requirements for existing equipment to ensure that the equipment will

perform as designed. With equipment performing as designed in response to postulated accidents, the proposed change does not affect any existing margins of safety

Based on the licensee's analysis and the staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: March 31, 1994

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specifications (TS) by incorporating operability and surveillance requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip instrumentation. Proposed surveillance requirements would be added to Table TS 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." TS 3.4, "Steam and Power Conversions System," would be revised to explicitly link operability of the associated Auxiliary Feedwater Pump Low Discharge Pressure Trip channel to operability of the associated auxiliary feedwater pump. In addition, minor format inconsistencies in TS 3.4.b.1.A and 3.4.b.1.B would be corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(a) Table TS 4.1-1

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change defines the necessary surveillance requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. The intent of adding surveillance requirements to the TS's is to ensure the availability and reliability of the components. The proposed change is an additional restriction not presently included in the TS's. Therefore, it will not increase the probability or consequences of an accident previously evaluated in the USAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adds surveillance requirements to the TS for the Auxiliary Feedwater Low Discharge Pressure Trip channels. It does not alter the plant configuration or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

This proposed revision is an additional requirement in the TS's to ensure the availability and reliability of the Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. It does not alter the input or assumptions of the safety analysis, and is an enhancement from an overall safety standpoint. Therefore, it will not involve a reduction in the margin of safety.

(b) TS 3.4

The proposed changes were reviewed in accordance with the provision of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change defines the necessary operability requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. Installation of this protection was recommended and approved by the NRC prior to their installation. The proposed change requires that the reactor not be heated ≤ 350°F unless both motor driven Auxiliary Feedwater Pumps and their associated low discharge pressure trip channels are operable. Also, the reactor shall not be heated ≤ 350°F unless the turbine driven auxiliary feedwater pump and its associated low discharge pressure trip channel are operable, or if not demonstrated operable prior to ≤ 350 °F, they shall be declared inoperable when 350°F is exceeded. Furthermore, when the reactor is ≤ 350°F, an auxiliary feedwater pump low discharge pressure trip channel may be inoperable for a period not to exceed 4 hours. If this time is exceeded, the associated auxiliary feedwater pump shall be declared inoperable and the appropriate limiting condition for operation of TS 3.4.b.2 entered. The intent of adding these operability requirements to the TS's is to ensure the availability of the components. The proposed change is an additional restriction not presently included in the TS's. Therefore, it will not increase the probability or consequences of an accident previously evaluated in the USAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adds operability requirements to the TS for the Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. It does not alter the plant configuration or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety

This proposed revision is an additional requirement in the TS's to ensure the operability of the Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. It does not alter the input or assumptions of the safety analysis, and is an enhancement from an overall safety standpoint. Therefore it will not involve a reduction in the margin of safety

(c) Administrative changes to TS 3.4.b.1.A and TS 3.4.b.1.B

The proposed changes were reviewed in accordance with the provision of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from an accident previously evaluated, or

3. Involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent of interpretation of the TS. Therefore, no significant hazards exist.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 24, 1994

Description of amendment request: The amendment request proposes to revise the Technical Specifications (TS) to implement the NRC's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (58 FR 39132). These improvements involve focusing the Technical Specifications on those requirements that are of controlling importance to operational safety by screening each TS in Section 3/4.1 through 3/4.11 using the criteria provided in the policy statement. The purpose of the proposed amendment request is to relocate the specifications that do not meet any of the four policy

statement criteria. The relocated specifications will be moved to Updated Final Safety Analysis (USAR) Chapter 16. Based on the screening, all or part of 38 technical specifications were identified as not meeting any of the criteria and, therefore, as candidates for relocation. The licensee has categorized the TS changes as (1) specifications relocated intact to USAR Chapter 16, (2) specifications relocated with portions retained in TS, (3) specifications relocated with programmatic requirements referenced in Section 6 of TS, (4) modifications to retained specifications to accomodate relocation of other specifications, and (5) new specification requirements incorporated into the TS. The last category is used to effect the retention of portions of relocated specifications and accomodate the policy statement recommendation to incorporate industry experience in the determination of TS content.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes involve relocating requirements that are not conditions or limitations on reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. The proposed changes were identified through the application of criteria designed to cull those requirements that are not important to operational safety from the Technical Specifications. In this process, selected provisions of the Technical Specifications identified for relocation were retained if necessary to support a Technical Specification that was to be retained. Thus, only specification requirements that have little or no operational safety significance are proposed for relocation. In addition, those requirements that would be relocated will be included in the Updated Final Safety Analysis Report (USAR) and, therefore, will be controlled and implemented as NRC commitments. In this manner, those requirements that have no operational safety significance but involve maintaining the plant in its as-designed state (for example, through surveillance programs) would be controlled.

In addition, the criteria for identifying requirements to be retained in the Technical Specifications specifically call out, for retention, those structures, systems, or components that are required to mitigate accidents previously evaluated.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes involve relocating Technical Specification requirements to another licensee-controlled document. No changes or physical alterations of the plant are involved. Also, no changes to the operation of the plant or equipment are involved. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed changes involve relocating Technical Specification requirements to the USAR. The requirements to be relocated were identified by applying the criteria endorsed in the Commission's Policy Statement. Thus, those specifications that would be relocated do not impose constraints on design and operation of the plant that are derived form the plant safety analysis report or from probabilistic safety assessment (PSA) information and do not belong in the Technical Specifications in accordance with 10 CFR 50.36 and the purpose of the Technical Specifications stated in the Policy Statement. Therefore, relocation of these requirements does not involve a significant reduction in the margin of safety.

In addition, revisions to the USAR will be evaluated in accordance with the 10 CFR 50.59 process which considers the reduction in safety margin. Therefore, any future revisions to the provisions in the USAR will consider reductions in the margin of safety using the criteria for identifying an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Theodore T. Quay

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 7, 1994

Description of amendment request: The proposed amendment revises Technical Specification Table 2.2-1, Reactor Trip System Instrumentation Setpoints, to change the over-temperature-delta-temperature (OTDT) axial flux difference (AFD) limits to reflect results of the Cycle 8 core maneuvering analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence and the consequences of an accident evaluated previously in the Updated Safety Analysis Report (USAR) are not increased due to the proposed technical specification change. Operation at 3565 MWt does not affect any of the mechanisms postulated in the USAR to cause LOCA or non-LOCA design basis events. Analyses, evaluations and minimum DNBR [departure from nucleate boiling ratio] calculations confirm that the USAR conclusions remain valid for the proposed changes. On these bases it is concluded that the probability and consequences of the accidents previously evaluated in the USAR are not increased.

2. The proposed change does not create the possiblity of a new or different kind of accident from any previously evaluated.

There is no new type of accident or malfunction being created. The proposed change provides revised operating limits necessary to support Cycle 8, and does not change the method and manner of plant operation. The safety design bases in the USAR have not been altered. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The analyses and evaluations discussed in the safety evaluation demonstrate that all applicable safety analysis acceptance criteria continue to be met for the proposed operating conditions. Items not specifically cited in this safety evaluation have been reviewed and have been found to be bounded by the evaluations performed for Reference 1 [Wolf Creek Generating Station Technical Specifications]. Therefore, it is concluded that the margin of safety, as described in the bases to any technical specification, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Theodore. R. Quay

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenberg County, North Carolina

Date of amendment request: May 5, 1994, as supplemented June 16, 1994.

Description of amendment request: The proposed amendments would change the Technical Specifications to increase Main Steam and Pressurizer Code Safety Valve Setpoint Tolerances.

Date of publication of individual notice in **Federal Register:** June 21, 1994 (59 FR 32029).

Expiration date of individual notice: July 21, 1994

Local Public Document Room location:

Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 29, 1992, as supplemented on October 22, 1993, and November 11, 1993.

Brief description of amendments: The amendments revise the Site Boundary Map and the Low Population Zone Map.

Date of issuance: June 22, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 190 and 167

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48813) The Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 13, 1994 (59 FR 25129). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

Date of application for amendment: February 11, 1993, as supplemented December 2, 1993, January 5, February 22, March 1, April 15, and May 16, 1994.

Brief description of amendment: This amendment increases the allowed fuel assembly storage cells from 2320 to 3859, changes the maximum loads allowed to travel over the spent fuel assemblies from 1050 to 2000 lbs., and changes the limiting characteristics of assemblies to be stored in the spent fuel from a maximum $K_{INIFITY}$ less than or equal to 1.35 to a Maximum $K_{INIFITY}$ less than or equal to 1.32 and a maximum lattice average uranium enrichment of less than or equal to 4.6% by weight.

Date of issuance: June 22, 1994

Effective date: June 22, 1994

Amendment No.: 155

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 30, 1993 (58 FR 26171) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, IllinoisDocket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, IllinoisDate of application for amendments: March 26, 1993

Brief description of amendments: The amendments revise Technical Specification 3/4.6 for Dresden and Quad Cities Stations to allow Single Loop Operation (SLO) with the recirculation loop suction and discharge valves open. The amendments also delete outdated and unnecessary portions of Technical Specification 3.6.H for Dresden Units 2 and 3 and provide more consistency to the BWR Standard Technical Specifications (NUREG-0123, Revision 4).

Date of issuance: June 16, 1994

Effective date: June 16, 1994

Amendment Nos.: 127, 121, 147, and 143

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17594) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: For Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South CarolinaDate of application for amendments: March 24, 1994, as supplemented April 11 and May 31, 1994

Brief description of amendments: The amendments revise the Technical Specification (TS) to increase boron concentration for the spent fuel storage pool during Modes 1-3 operation and for the refueling canal during Mode 6 operation; include two reload related topical reports in TS 6.9.1.9; and correct errors in nomenclature and remove obsolete footnotes.

Date of issuance: June 13, 1994

Effective date: June 13, 1994

Amendment Nos.: 120 and 114

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22006) The April 11 and May 31, 1994, letters provided clarifying and additional information that did not change the scope of the March 24, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, ConnecticutDate of application for amendment: December 17, 1993, as supplemented April 12, 1994.

Brief description of amendment: The amendment changes the action statements for the limiting conditions for operation associated with the electrical power sources (Technical Specification 3.8.1.1).

Date of issuance: June 14, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 177

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994(59 FR 4943). The April 12, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York Date of application for amendment: December 28, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) Section 6.9(A)1.a. to permit startup reports for cycles subsequent to the initial fuel cycle to address only those startup tests that are actually performed. The amendment also revises TS Section 6.9(A) to clarify requirements for the submission of routine reports. These changes are consistent with the guidance provided in NUREG-1433, "Standard Technical Specifications - General Electric Plants, BWR/4."

Date of issuance: June 16, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 212

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4945) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 29, 1993

Brief description of amendment: The amendment revises Appendix B of the Technical Specifications (TSs), the Radiological Effluent TSs. Specifically, the amendment revises Appendix B Surveillance Requirement 3.1.a. and Table 3.10-2 to provide surveillance requirements for data recorders associated with the gaseous effluent monitoring system. The amendment also makes an editorial change to Appendix B Limiting Condition for Operation 3.1.a. to improve consistency and clarity.

Date of issuance: June 16, 1994Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 213

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4946) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: May 13, 1991, as supplemented October 13, 1992.

Brief description of amendments: The amendments modify the TS for the overpressure protection systems. The allowable outage time (AOT) for one inoperable residual heat removal (RHR) relief valve with one or more of the reactor coolant system cold leg temperatures less than or equal to 310 degrees Fahrenheit is being decreased from 7 days to 24 hours for water-solid

conditions. The required AOT for low temperature conditions, other than water-solid, will remain at 7 days with one RHR relief valve inoperable, provided the pressurizer level is less than or equal to 30 percent and a dedicated operator is assigned to monitor and control the reactor coolant system pressure.

Date of issuance: June 16, 1994
Effective date: June 16, 1994
Amendment Nos.: 108 and 100
Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32577) and February 17, 1993 (58 FR 8787)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendment: April 1, 1992 (TS 302)

Brief description of amendments: The amendments add requirements to the Browns Ferry Units 1 and 3 Technical Specifications to provide administrative controls for a post-accident sampling system, which were requested by Generic Letter 83-36, "NUREG-0737 Technical Specifications."

Date of issuance: June 21, 1994
Effective date: June 21, 1994
*Amendment Nos.:*207 and 180
Facility Operating License Nos. DPR-33 and DPR-68:

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22269) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 23, 1992, as supplemented on March 18, 1994.

Brief description of amendment: This amendment revises TS 3/4 3.3.5 for transfer switches used to meet 10 CFR Part 50, Appendix R (Fire Protection) requirements, and specifies a new special report requirement for TS 6.9.2.

Date of issuance: June 14, 1994
Effective date: June 14, 1994
Amendment No. 187
Facility Operating License No. NPF-3. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10016) The supplemental information submitted on March 18, 1994, did not change the initial proposed finding of no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: December 20, 1993, as amended March 25 and April 25, 1994

Brief description of amendment: The amendment modifies the technical specifications (TS) to address new containment purge and vent valves to be installed in the 1994 refueling outage. The amendment changes the containment purge and vent valve TS as follows: (1) removes the requirement ensuring that valve position remains at less than or equal to 70 degrees, (2) changes the containment leak testing requirements for the metal-to-metal seated valves from 6 months to 2 years since they have improved seat designs, and (3) makes administrative changes to delete an out-of-date note, to relocate an action statement requirement from the TS surveillance section to the TS action statement section, and to change a related TS reference to this surveillance section. Valve opening position does not need to be limited to less than or equal to 70 degrees. The resiliently-seated valves have a permanently installed mechanical stop to limit the open position to ensure adequate closure times. The metal-to-metal seated valves are designed to close from the 90-degree open position.

Date of issuance: June 15, 1994
Effective date: 15 days from the date of issuance
Amendment No.: 124
Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14901) The additional information contained in the March 25 and April 25, 1994, letters was clarifying in nature, is within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1994.Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 8, 1994, as supplemented March 25, 1994

Brief description of amendment: The amendment revises the WNP-2 Technical Specifications. Specifically, the amendment increases the stroke time, as specified in Table 3.6.3-1, for reactor core isolation cooling (RCIC) valve RCIC-V-8 from 13 seconds to 26 seconds and deletes the Note (j) reference from RCIC-V-8 and RCIC-V-63. Note (j) indicates that the stroke time specified in the table reflects the requirement for containment isolation only.

Date of issuance: June 17, 1994

Effective date: June 17, 1994

Amendment No.: 125

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1994 (59 FR 24754) The additional information contained in the March 25, 1994, letter was clarifying in nature, was within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352]

Dated at Rockville, Maryland, this 28th day of June 1994.

FOR THE NUCLEAR REGULATORY COMMISSION

Jack W. Roe,

Director, Division of Reactor Projects - III/IVOffice of Nuclear Reactor Regulation

[Doc 94-16174 Filed 7-5-94 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–60117, License No. SOP–11160, IA 94–014]

Order Prohibiting Involvement in 10 CFR Part 55 Licensed Activities (Effective immediately)

In the Matter of: Stephen Mignotte, Senior Reactor Operator.

I

Stephen Mignotte (Mr. Mignotte) held Senior Reactor Operator License No. SOP–11160 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 55. The license authorized Mr. Mignotte to manipulate, and to supervise the manipulation of, the controls of the nuclear power reactor at the New York Power Authority's (Facility Licensee) Indian Point 3 Nuclear Power Plant in Buchanan, New York. On November 23, 1993, Mr. Mignotte resigned his employment with the New York Power Authority, which caused the License to expire. Additionally, the Facility Licensee, in a letter dated December 23, 1993, informed the NRC that the New York Power Authority no longer had a need to maintain Mr. Mignotte's operating license for the Indian Point Unit 3 Nuclear Power Plant.

II

The responsibilities associated with a Senior Reactor Operator license issued pursuant to 10 CFR Part 55 require that individuals be fit for duty while performing safety-related activities at the facility. The character of the individual, which includes the individual's trustworthiness, is a consideration in issuing an operator license. *See* Section 182a of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2232a). In determining whether or not an individual seeking a license to be a reactor operator or senior reactor operator has the necessary character and trustworthiness, the Commission takes into account any history of illegal drug use by the applicant. Prior to May 26, 1987, each applicant for a reactor operator or senior reactor operator license was required to certify that the applicant had no drug or narcotic habit on the Certificate of Medical Examination, NRC Form 396. Since that time, the NRC has required an evaluation of the applicant prepared by a physician as part of a license application. *See* 10 CFR 55.23(a). This evaluation is presented on a Certificate of Medical Examination, NRC Form 396. *See* 10 CFR 55.23. Among the factors to be considered by the certifying physician are factors such as use of illegal drugs or abuse of alcohol. *See* Form 396; *see also* ANSI/ANS 3.4–1983, Section 5.2.2.

In accordance with 10 CFR Part 26, the Facility Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities. In addition, licensed operators are required by 10 CFR 55.53(j) to refrain from use of illegal drugs, including marijuana and cocaine. Licensed operators are also required by 10 CFR 55.53(k) to participate in 10 CFR Part 26 fitness-for-duty programs established by the Facility Licensees.

III

On November 23, 1993, Mr. Mignotte, while on duty as a Senior Reactor Operator at the Indian Point 3 facility, was requested by the Facility Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Facility Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from Mr. Mignotte, the nurse checked the temperature of the sample, noticed that it felt "cool to the touch", and found that the temperature was below specifications in 10 CFR Part 26, Appendix A, § 2.4(g)(14), for acceptable urine samples. As a result, Mr. Mignotte was requested to provide a witnessed urine sample to the Facility Licensee in accordance with the same section of the Appendix. Mr. Mignotte provided a second sample which was subsequently determined, on November 30, 1993, to contain both marijuana and cocaine above cutoff levels specified by the Appendix. After the witnessed urine sample had been collected on November 23, 1993, Mr. Mignotte was suspended from licensed duties and he subsequently resigned that same day. These facts were provided to the NRC by the Facility Licensee, in letters dated December 23, 1993 and January 3, 1994, and were discussed in the report of an NRC inspection conducted January 12–13, 1994.

The results of the second, witnessed urine sample indicate that Mr. Mignotte used illegal drugs, which is a violation of the conditions of his license imposed by 10 CFR 55.53(j). Furthermore, his performance of licensed duties while under the influence of illegal drugs is also a violation of the conditions of his license imposed by 10 CFR 55.53(j). Based on the temperature of the first urine sample provided by Mr. Mignotte and the fact that the first sample yielded negative results when tested for illegal substances while the subsequent, witnessed sample yielded positive results, I conclude that the first sample was a surrogate false sample, submitted by Mr. Mignotte in an attempt to conceal illegal drug use.

10 CFR 50.5(a)(2) prohibits any employee of a licensee from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The urine samples collected within the context of a licensee's chemical testing program pursuant to the requirements of 10 CFR Part 26 represent information material to an access authorization and fitness-for-duty decision. Therefore, Mr. Mignotte's deliberately submitting inaccurate information material to the NRC in the form of a false sample is a violation of 10 CFR 50.5(a)(2). In addition, Mr. Mignotte violated 10 CFR 50.5(a)(1) by deliberately providing to the Facility Licensee a surrogate urine sample that he knew to be inaccurate at the time he submitted it and which, but for detection, would have caused the Facility Licensee to be in violation of 10 CFR 50.9(a).

Mr. Nignotte's failure to comply with the prohibition against illegal drug use and his attempts to circumvent the chemical testing program to avoid detection of illegal drug use while employed by the Facility Licensee are violations of the conditions of Mr. Mignotte's license imposed by 10 CFR 55.53 (j) and (k), and demonstrate an intentional disregard for the important obligations of a licensed operator.

IV

Based on the above, Mr. Mignotte, an employee of the New York Power Authority at the time of the incident, engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(1) and (2) by deliberately violating 10 CFR 55.53(k), in that he submitted to the facility licensee information which he knew to be inaccurate in some respect material

to the NRC. Mr. Mignotte, a licensed Senior Reactor Operator at the time of the event, also used illegal substances and performed licensed duties while under the influence of illegal substances in violation of 10 CFR 55.53(j), and deliberately failed to participate in the fitness-for-duty program established by the facility licensee in violation of 10 CFR 55.53(k).

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mignotte's actions in using illegal drugs and attempting to circumvent fitness-for-duty requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed individuals and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Mr. Mignotte will conduct any 10 CFR Part 55 licensed activities in compliance with the Commission's requirements and that the health and safety of the public will be protected with Mr. Mignotte engaged in such licensed activities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Mignotte be prohibited from involvement in 10 CFR Part 55 licensed activities for three years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 55.61, it is hereby ordered, effective immediately, that:

A. Mr. Mignotte is prohibited for three years from the date of this Order from engaging in licensed operator activities licensed by the NRC pursuant to 10 CFR Part 55.

B. For a period of three years from the date of this Order, Mr. Mignotte shall provide a copy of this Order to any prospective employer engaged in activities licensed by the NRC pursuant to 10 CFR Part 50 prior to his acceptance of employment with such prospective employer so that the employer will have notice of the prohibition against Mr. Mignotte's involvement in licensed operator activities licensed pursuant to 10 CFR Part 55.

C. For three years from the date of this Order, Mr. Mignotte shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer, from an employer who is engaged in activities licensed by the NRC pursuant to 10 CFR Part 50.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mignotte of good cause.

VI

In accordance with 10 CFR 2.202, Mr. Mignotte must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mignotte or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, PA 19406; and to Mr. Mignotte, if the answer or hearing request is by a person other than Mr. Mignotte. If a person other than Mr. Mignotte requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mignotee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mignotee or any person adversely affected, by this Order, may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 28th day of June 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94–16313 Filed 7–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251, 50–335 and 50–389]

Florida Power and Light Co. (Turkey Point and St. Lucie Nuclear Plants) Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that on June 7, 1994, Thomas J. Saporito, Jr. filed a petition under 10 CFR 2.206 of the Commission's regulations requesting that the NRC take action against Florida Power and Light Co. as operator of the Turkey Point and St. Lucie nuclear power stations.

The Petitioner asks that the NRC institute a show cause proceeding to modify, suspend or revoke Florida Power and Light Co.'s operating licenses and that the NRC take escalated enforcement action for retaliatory actions which were taken against him, a former employee, for engaging in protected activities as defined in 10 CFR 50.7. Petitioner asks that the NRC also take escalated enforcement action against every employee of the company who is found to have been involved in the retaliatory actions.

In order to determine which Licensee employees were involved in the relatiatory actions and to assess the overall work environment at the plants, Petitioner asks that the NRC conduct an investigation. In addition to the specific acts of retaliation he claims were taken against him, the Petitioner alleges that other employees have also been retaliated against, creating a chilling effect at the Turkey Point plant beginning in 1988. Petitioner asks that the NRC initiate an investigation into

his claims, which involve alleged violations of 10 CFR 50.7 and 19.15 and the Energy Reorganization Act, notwithstanding the fact that they are being pursued within the Department of Labor, because of the asserted public health and safety implications involved.

The Petitioner's request has been referred to the Director of the Office of Enforcement. As provided by 10 CFR 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 24th day of June 1994.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Acting Director, Office of Enforcement.

[FR Doc. 94–16314 Filed 7–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–2]

Virginia Electric and Power Co. Notice of Issuance of Amendment to Materials License SNM–2501

The U.S. Nuclear Regulatory Commission [the Commission) has issued Amendment No. 7 to Materials License No. SNM–2501 held by Virginia Electric and Power Company for the receipt and storage of spent fuel at the Surry ISFSI, located in Surry County, Virginia. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications making procedural changes to spent fuel characteristics for the CASTOR V/21 cask and allows use of the CASTOR X/33 cask at the site. These changes do not affect fuel receipt, handling, and storage safety. They are procedural in nature and result in a change in process operations and equipment that does not alter the scope and type of operations presently authorized. The safety evaluation for this amendment demonstrates that the accident consequences for the analyzed design basis accidents remain negligible. There is reasonable assurance that the public health and safety will remain protected by activities authorized under this amendment and that the environmental impact will remain insignificant.

The applications for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.21, an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the applications for amendment dated December 23, 1988, May 3, 1991, and November 19, 1993, and (2) Amendment No. 7 to Materials License No. SNM–2501, and (3) the Commission's letter to the licensee dated June 29, 1994. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia, 23185.

Dated at Rockville, Maryland this 29th day of June, 1994.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Storage and Transport Systems Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 94–16321 Filed 7–5–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Acquisition Regulation (FAR) Rewrite

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of public meeting and request for public comments.

SUMMARY: In response to the report of the National Performance Review (NPR) recommendation to convert the FAR from rigid rules to guiding principles, the Administrator for Federal Procurement Policy has established a Board of Directors (hereinafter the Board), comprised of senior level individuals from the Executive Branch, to develop a plan for the FAR rewrite. This notice solicits public comment on two approaches for the rewrite, including drafting principles, the Board is considering.

Both approaches delineate mandatory and nonmandatory provisions. The first approach would provide for (1) a FAR that is limited to mandatory governmentwide regulations, and (2) an acquisition manual that would reprint the FAR and also include nonmandatory governmentwide policies, procedures, etc. In addition, agency supplements, including both mandatory and nonmandatory provisions, would be authorized to implement agency-unique statutes, policies, etc.

The second approach would consist of (1) the FAR which would include all mandatory Governmentwide provisions, and (2) separate acquisition manuals developed by an agency or a group of agencies. The manuals would include mandatory provisions necessary to implement statutes unique to the agency or group of agencies, a minimal number of mandatory policies and procedures not required by statute, and nonmandatory guidance.

Both approaches would result in a FAR containing only mandatory provisions. However, the first approach would promulgate governmentwide nonregulation guidance, while the second approach would permit an agency to promulgate in agency manuals whatever nonregulation guidance the agency deems appropriate. Additionally, the first approach would retain agency FAR supplements, while the second approach would replace agency supplements with agency acquisition manuals.

The Board has prepared a model rewrite of FAR Part 9 to illustrate the first approach. It is drafted as a governmentwide manual containing both the new FAR (which will also be codified in the Code of Federal Regulations); and policies, procedures, provisions, forms, and clauses that do not constitute regulations. An actual FAR rewrite would likely include a wider variety of options and illustrations than appear in the nonregulation component of the model. This notice solicits comments only on the proposed approach for the FAR rewrite, and not on the content of the model rewrite of Part 9.

The Board intends to provide for a mutual exchange of ideas and information with affected parties both in the government and the private sector by publishing this notice, soliciting public comments, and holding a public meeting.

DATES: Written comments must be received in the Office of Federal Procurement Policy on or before August 5, 1994.

A public meeting will be held at 9:30 on August 17, 1994. Persons or organizations wishing to present ideas

or suggestions will be allowed five minutes each to present their views, provided they notify Ms. Rebecca Hardy at 202–395–3501 by August 10, 1994. Persons or organizations with similar positions are encouraged to select a common spokesperson for presentation of their views.

ADDRESSES: Written comments and statements for presentation should be submitted to Susan E. Alesi, Special Assistant for Regulations, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503.

A public meeting will be held in Room 2010, New Executive Office building (NEOB), 725 17th Street, NW, Washington, DC. Individuals wishing to attend the meeting, including individuals wishing to make presentations should contact Ms. Rebecca Hardy at 202–395–3501 prior to 3:30 p.m. on August 16, 1994, for clearance to the NEOB.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi, at 202–395–6803, Office of Federal Procurement Policy.

SUPPLEMENTARY INFORMATION: On September 7, 1993, the Vice President released the report of the NPR which required simplification of the procurement process by rewriting the FAR, shifting from rigid rules to guiding principles. According to the report, the FAR, which is the government's principal set of procurement regulations, is too process oriented, changes too often, minimizes discretion of procurement officials, and stifles innovation. The Board intends to develop a plan to rewrite the FAR to move from a system of rigid rules to guiding principles, promote decision making at the lowest possible level, eliminate unnecessary regulatory requirements, facilitate innovative contracting and develop a more effective process to listen to its customers.

This project will be accomplished under the direction of the Administrator for Federal Procurement Policy with the assistance of a Board of Directors comprised of senior-level officials from the Executive Branch.

The Board has begun planning the FAR rewrite project by defining two approaches and by drafting a model FAR Part 9 that adheres, for the most part, to the drafting principles outlined in this announcement as the first approach. However, if the FAR is actually rewritten along the lines of the model, we expect that there would be additional material and more than one optional approach or illustration to be included in many parts of the nonregulation part of the model. The Board intends to recommend adoption of the NPR philosophy of giving greater flexibility in the formulation and administration of contracts.

Questions for Commentors

To assist the Board in its deliberations, it is requested that all interested parties review the proposed approaches, drafting principles, and illustration of the model rewrite of FAR Part 9. This notice solicits comments on the proposed approaches for the FAR rewrite and not on the content of the model rewrite of FAR Part 9. In preparing comments the Board requests that commentors consider the following questions with regard to each approach:

1. Does the proposed approach represent an improvement to the existing FAR system? If not, please suggest an alternative approach.
2. Does the proposed approach remove from the regulations system unnecessary, burdensome direction while still providing the procurement community with sufficient common policy and principles? If not, please suggest an alternative approach.
3. Does the proposed approach increase discretion and encourage innovation while still fostering good contracting practices? If not, please suggest an alternative approach.
4. Does the proposed approach simplify the procurement process? If not, please suggest an alternative approach.
5. Does the approach of publishing nonregulation information in an acquisition manual provide useful guidance for contracting officers in decision making, formulating process or practical solutions, identifying alternatives? If not, please suggest an alternative approach.
6. Does the proposed approach for the Code of Federal Regulations to contain only the regulation component of the model raise any concerns for you? If so, please suggest an alternative approach.
7. The nonregulation component of the model would normally not be published for public comment in the **Federal Register**. Does this approach create a problem? What problem? If so, please suggest an alternative approach.
8. Which types or categories of provisions and clauses would you recommend to be included in the regulation component of the model? In the nonregulation manual component of the model?
9. Does the proposed approach to include only guidance needed by procurement personnel improve the contracting process? If not, please suggest an alternative approach.
10. Is there a better approach for rewriting the FAR? What is it?
11. How do we carry forward to lower levels the concept of moving away from a centralized direction?
12. Please provide any other comments you consider appropriate.

First Proposed Approach

Discussion

The basic thrust of this approach under consideration by the Board is to divide the FAR into regulation and nonregulation (a Governmentwide manual) components. The new FAR will essentially retain its current 53 Part structure and will contain policies, provisions and clauses necessary to implement statutory requirements, primary regulation requirements, basic policies/guiding principles and essential governmentwide procedures. Much of the material, provisions and clauses that will be removed from the FAR will be made available in nonregulation remarks in a Federal acquisition manual. In addition, agencies will continue to issue supplements to the FAR, including minimal mandatory as well as nonmandatory provisions. The FAR will be mandatory for use by the agencies, and will be codified in the Code of Federal Regulations.

The Government acquisition manual will include the FAR text, and in addition, will provide nonmandatory guidance, alternative approaches, forms, clauses, and other examples that may be used, at their discretion, by contracting officers in structuring a procurement. The nonregulation material in the manual will be published for public comment only when required by Section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b), which does not require publication of the type of information normally provided nonregulation component of the acquisition manual.

The FAR system will promote decision making at the lowest practicable level by permitting contracting officers to use, modify, tailor to best suit individual situations or disregard nonregulation policies, procedures, provisions, forms and clauses. For example, in the illustration of a new FAR Part 9, the clauses covering First Article Approval, Contractor Testing, (FAR 52.209–3) would be eliminated from the regulation component but would be included in the nonregulation component.

Proposed Drafting Principles—Structure

1. Include in the FAR statements of general policy, standards, forms, provisions, and clauses that—

a. Are required by, or reasonably necessary to implement Statutes,

Executive Orders, OMB Circulars, OFPP Policy Letters, and, as appropriate, case law.

b. The FAR Council or joint FAR signatories decide must have governmentwide application because consistency is essential to maintain an effective and efficient acquisition system.

2. Do not include in the FAR:

a. Procedures, policies, provisions or clauses which are not essential.

b. Guidance that is not needed by procurement personnel.

3. Include in the acquisition manual—

a. Examples of various optional methods for compliance with FAR policies, provisions, and clauses.

b. Procedures, practices, forms provisions, and clauses that may be used, modified, or not used, at the discretion of the Contracting Officer.

Proposed Drafting Principles—General

1. Clearly identify the statutory requirements, basic policies, and principles.

2. Avoid proscription and rigid rules in favor of setting forth guiding principles.

3. Use goals and expected outcomes in place of processes or procedures.

4. Assume the reader is a procurement professional with appropriate knowledge, skills and abilities to do the job.

5. Assume contractors and contracting officials are going to do the "right thing."

6. Assign responsibility for decisions to the lowest practicable level, giving contracting officers authority, responsibility, and maximum flexibility to find the most efficient, cost-effective way to meet customer mission needs and time frames.

7. Minimize administrative and paperwork burdens on contracting officials and contractors.

8. Include in the FAR references to procurement related statutes and regulations, such as labor laws, and small business size standards. Provide, as appropriate, in the acquisition manual, necessary additional information to assist the contracting officers in complying with those requirements.

9. Provide guidance that encourages sound business practices, streamline the contracting process, contributes to increased productivity, and cost effectiveness.

10. Provide guidance that implements policies based on statute without just restating the law.

11. Avoid guidance and other controls that impose unnecessary dollar thresholds, approval levels, contractor certifications, coordination and documentation requirements, determinations.

12. Provide guidance that offers maximum opportunity for innovative contracting approaches.

13. Avoid the creation of regulations to address every contracting contingency.

14. Provide guidance to contracting officers that encourages risk management rather than risk avoidance.

15. Avoid regulations that impose government-unique, unnecessary requirements on federal contractors. Promote the acquisition of commercial products and reliance on the commercial marketplace.

16. Apply a consistent set of drafting conventions so that the FAR will be succinct and understandable to the general reader.

Second Proposed Approach

The second approach is essentially the same as the first approach with respect to which material would be regulations and which material would be provided in a nonregulation acquisition manual. However, the nonregulation material would not be published as a governmentwide manual. Rather, each agency, or group of agencies would be authorized to publish its own manual containing its own guidance. These manuals would contain a minimal amount of mandatory material applicable to the internal operations of the agency or necessary to implement the statutes that apply to that agency or group of agencies. The remainder of the material in the manual would be that as noted in the first approach as nonregulation in nature and not mandatory. Thus the FAR system would be comprised of the FAR (regulations) and agency acquisition manuals (nonmandatory guidance and minimal mandatory requirements) that would take the place of current agency supplements.

Illustration of the First Proposed Approach

Model of revised Part 9. The model FAR Part 9 is provided in the appendix to illustrate the first approach being considered by the Board. Comment only on the approach illustrated by this model rewrite, and not on the content of the model rewrite on Part 9. FAR Part 9 will be submitted to a committee for revisions in accordance with these Drafting Principles once the Drafting Principles have been approved. The following model rewrite of FAR Part 9 shows the governmentwide acquisition manual as it would appear under proposed number one.

Proposed approach number two would follow the same criteria as is followed under proposed approach one to determine which material is to be codified in the CFR and which material is to appear in nonregulation guidance. However, under proposed approach number two, the nonregulation guidance would be published by individual agencies in manuals that apply to contracts issued by that agency.

Dated: June 30, 1994.

Steven Kelman,

Administrator.

BILLING CODE 3110-01-M

Appendix–Model FAR

MODEL FAR INTRODUCTION

(a) The Federal Acquisition Regulation System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency regulations that implement or supplement the FAR. The FAR and its supplements are codified in the Code of Federal Regulations.

(b) A nonregulation component is provided in the FAR loose-leaf edition for assistance of FAR users and identified as "Nonregulation remarks". The nonregulation remarks are not mandatory and provide guidance and examples which do not have the force and effect of law. The "Nonregulation remarks" will not be codified; however, portions may be published for public comment only when deemed appropriate by the regulatory agencies issuing this document. Some nonregulation remarks include examples, information from other sources and suggestions as to methods to use in particular situations. Even though a method may be suggested in the nonregulation remarks, it is not intended to be mandatory, nor is it intended to restrict any contracting officers to a particular method. The suggested methods may be used in whole, in part, or not at all, depending on the preferences of the agency and contracting officer.

PART 9—CONTRACTOR QUALIFICATIONS

SUBPART 9.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

9.100 Scope of subpart.

This subpart implements 41 U.S.C. 403(7) and addresses prospective contractor and subcontractor responsibility.

9.101 Definitions.

"Responsible prospective contractor" means a contractor that meets the standards in 9.104.

"Preaward survey" means an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract.

"Surveying activity" means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

(1) In the United States, its possessions, or Puerto Rico; or

(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with:

(1) Foreign, State, or local governments;

(2) Other Federal agencies or their instrumentalities; or

(3) Agencies for the blind or other severely handicapped (see nonregulation remarks under 9.104 and Subpart 8.7).

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. A prospective contractor must affirmatively demonstrate its responsibility and may be required by the contracting officer to provide evidence of its subcontractor's responsibility.

(b) Determinations of responsibility or nonresponsibility are within the authority of the contracting officer, except those relating to small business concerns, in which case responsibility rests with the Small Business Administration, which is responsible for deciding whether or not to issue Certificates of Competency (see Subpart 19.6).

(c) If a procurement is being conducted under Section 8(a) of the Small Business Act, responsibility determinations shall be handled under Subpart 19.8.

(d) Any special standards of responsibility shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(e) Preaward survey information that contains proprietary and/or source selection information shall be marked with the appropriate legend and protected accordingly (see 3.104-4(j) and (k)).

Nonregulation remarks

While Government purchases should be made economically, you need not award based on lowest price if you find that offeror may not be able to perform satisfactorily. It may be more appropriate to award to the next low offer to avoid late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs.

When experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance, you may establish special standards of responsibility.

9.104 Standards.

To be determined responsible, a contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them;

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record;

(d) Have a satisfactory record of integrity and business ethics;

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Appendix—Model FAR

Nonregulation remarks

Applying the standards

Ability to obtain resources. You may ask the contractor for acceptable evidence of ability to obtain required resources (see 9.104-1(a), (e), and (f)), unless you know it has sufficient resources or proposes to perform the contract by subcontracting. Acceptable evidence could consist of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel.

Satisfactory performance record. You may determine a contractor to be nonresponsible if it is or recently has been seriously deficient in contract performance, unless the circumstances were properly beyond the contractor's control, or the contractor has taken appropriate corrective action. You can view a contractor's past failure to apply sufficient tenacity and perseverance to perform acceptably as strong evidence of nonresponsibility. For example, failure to meet the quality requirements of the contract or noncompliance with subcontracting plans (if a plan is required under Subpart 19.7)

Affiliated concerns. Affiliated concerns (see "Affiliates" and "Concerns" in 19.101) are normally considered separate entities in determining contractor responsibility. However, an affiliate's past performance and integrity may be considered in determining the responsibility of the prime contractor.

Conducting preaward surveys

Obtaining information. To limit expenses of offerors, you may limit requests for information to only the low bidder or those offerors in range for award. However, in negotiated contracting, especially when research and development is involved, you may obtain this information before issuing the request for proposals.

Examples of some sources of information that may be useful in evaluating contractor responsibility include the list of Parties Excluded from Procurement Programs (see Subpart 9.4.), preaward survey reports and, if the contract is for construction, you may refer to performance evaluation reports (see 36.201(c)(2)).

Determinations. Unless a separate determination is prepared, the contracting officer's signing of a contract effectively constitutes a determination that the prospective contractor is responsible for that contract.

Conditions for preaward surveys. You should consider requesting a preaward survey when the information you have is not sufficient to make a determination regarding responsibility. However, if the contract is a low dollar value, a preaward survey may not be cost effective.

Requests for preaward surveys. (Preaward Survey of Prospective Contractor (General), SF 1403) may be used to request a preaward survey. Information useful to include in preaward survey requests:

- *Specify any additional factors about which information is needed;*
- *Include the complete solicitation package and any information indicating prior unsatisfactory performance by the contractor;*
- *State whether the contracting office will participate in the survey;*
- *Specify the date when the report is required. This date should be consistent with the scope of the survey requested and normally allow at least 7 working days;*
- *Any limiting of the scope of the survey.*

Surveys of nonprofit agencies serving people who are blind or have other severe disabilities. The Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) determines the supplies and services agencies are required to purchase from nonprofit agencies serving people who are blind or have other severe disabilities and whether the nonprofit agency is responsible (see Subpart 8.7).

The Committee may request a contracting office's assistance in assessing the capabilities of a nonprofit agency The contracting officer then has the option of requesting a capability survey, or notifying the Committee that the nonprofit agency is capable, with supporting rationale, and that the survey is waived. Ordinarily the capability survey would focus only on the technical and production capabilities to furnish the supplies or services being considered for addition to the Procurement List.

SUBPART 9.2—QUALIFICATIONS REQUIREMENTS

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 2319 and 41 U.S.C. 253c and prescribes policies regarding qualification requirements.

9.201 Definitions.

"Procuring activity," as used in this subpart, means "contracting activity" as defined in Subpart 2.1 unless otherwise specified in agency regulations.

"Qualification requirement" means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

"Qualified bidders list (QBL)" means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

"Qualified manufacturers list (QML)" means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

"Qualified products list (QPL)" means a list of products which have been examined, tested, and have satisfied all applicable qualification requirements.

Nonregulation remarks

Qualification and listing in a QPL, QML, or QBL is the process by which (a) products are obtained from manufacturers or distributors, examined and tested for compliance with specifications, or (b) manufacturers or potential offerors are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful products, manufacturers, or potential offerors are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products, manufacturers, or potential offerors are included in a QPL, QML, or QBL.

Specifications and instructions. Specifications for qualified product are included in the Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR 101-29.1

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and the Department of Defense Index of Specifications and Standards. Instructions concerning qualification procedures are included in Federal Standardization Handbook, FPMR 101-29, Chapter IV and Defense Standardization Manual 4120.3-M, Chapter IV, as amended by Military Standards 961 and 962. These documents may be obtained by following the procedures in the provisions at 52.210-1 and 52.210-2.

9.202 Establishment of a qualification requirement.
(a) Before establishing a qualification requirement, the agency head shall prepare a written justification as to—
(1) The necessity for establishing the qualification requirement;
(2) The reasons why the qualification requirement must be demonstraled before contract award;
(3) The likely costs for testing and evaluation which will be incurred by an offeror to become qualified; and
(4) All requirements that an offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.
(b) Upon request to the contracting activity, potential offerors shall be provided—
(1) All requirements that they or their products must satisfy to become qualified; and
(2) At their expense (but see (c)(2) with regard to small businesses), a prompt opportunity to demonstrate their ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements or under contract, or other methods approved by the agency (including use of commercial firms).
(c) If active competition on anticipated future qualification requirements is likely to be fewer than two manufacturers or the products of two manufacturers, the agency shall—
(1) Periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification unless the contracting officer determines that such publication would compromise national security.
(2) Bear the cost of conducting the testing and evaluation for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. Costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated shall not be covered by the agency. The costs of testing and evaluation may be assumed only if the agency determines that the additional qualified sources or products will likely produce cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated future requirements. A prospective contractor requesting that the Government bear testing and evaluation costs must certify as to its status as a small business concern under Section 3 of the Small Business Act (15 U.S.C 632) in order to receive further consideration.
(d) When justified under the circumstances, the agency activity responsible for establishing a qualification requirement shall submit to the competition advocate for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the competition advocate reviewing the determination, the head of the procuring activity may waive the requirements of 9.202(a) for up to 2 years for the item subject to the qualification requirement. The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.
(e) The Certificate of Competency procedures in Subpart 19.6 are not applicable to a challenge by an offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

Nonregulation remarks

If a qualification requirement applies to an acquisition, you should consider reviewing the applicable QPL, QML, or QBL or other list of sources which have met the requirement, before issuing a solicitation, to determine the extent of competition. If the number of sources is inadequate, consider whether any sources are presently undergoing evaluation. If so, the solicitation could be rescheduled to allow additional sources to qualify or possibly, another means for testing or demonstrating quality assurance used.

If a product subject to a qualification requirement is to be acquired as a component of an end item, it is recommended that the contracting officer identify all such components and their qualification requirements in the solicitation since the product or source must meet the standards specified for qualification before award.

9.203 Testing and evaluation of additional offerors.
(a) If testing and evaluation services are provided by contract, the contractors selected to provide testing and evaluation services shall—
(1) Not be expected to benefit from an absence of additional qualified sources; and
(2) Be required by their contracts to adhere to any restriction on technical data asserted by the offeror seeking qualification.
(b) An offeror seeking qualification shall be promptly informed as to whether qualification is attained and, if not, the reason why not.
(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award, a potential offeror may not be denied the opportunity to submit and have its offer considered.
(d) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the agency head, a procurement need not be delayed in order to comply with 9.202(a).

Nonregulation remarks

When an agency establishes a qualification requirement, it may be useful to urge manufacturers and other potential sources to demonstrate their ability to meet the qualification standards before award and send a CBD notice with the following information to Commerce at the address at 5.207(a)(2):

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- *Intent to establish a qualification requirement;*
- *The specification number and name of the product;*
- *The name and address of the activity to which a request for the information and opportunity described in 9.202(a)(2) should be submitted;*
- *The anticipated date that the agency will begin awarding contracts subject to the qualification requirement;*
- *A precautionary notice that when a product is submitted for qualification testing, the applicant must furnish any specific information that may be requested of the manufacturer before testing will begin;*
- *The approximate time period following submission for qualification testing by which the applicant will be notified whether the product passed or failed.*

9.204 Enforcement of qualification requirements.
(a) Agencies may not enforce any QPL, QML, or QBL without first complying with the requirements of 9.202(a).
(b) Whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a). The only exception is when the agency head determines that an emergency exists.
(c) Within 7 years following enforcement of a QPL, QML, or QBL, the qualification requirement shall be examined and revalidated in accordance with the requirements of 9.202(a). Any periods for which a waiver under 9.202(b) is in effect shall be excluded in computing the 7 years within which review and revalidation must occur.

9.205 Changes in status regarding qualification requirements.
If an agency determines that a product or source no longer meets the standards specified for qualification, the agency may take appropriate action without advance notification. However, the agency shall promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL or will no longer be identified as meeting the standards specified for qualification and provide specific information why.

Nonregulation remarks
Circumstances may warrant removal or omission from a QPL, QML, or QBL or affect whether a source should continue to be identified as meeting the requirement. These conditions should be promptly reported to the agency activity which established the qualification requirement.

9.206 Contract clause.
The contracting officer shall insert the clause at 52.209-1X, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

SUBPART 9.3—FIRST ARTICLE TESTING AND APPROVAL

9.301 Definitions.
"Approval," as used in this subpart, means the contracting officer's written notification to the contractor accepting the test results of the first article.
"First article," as used in this subpart, means preproduction models, initial production samples, test samples, first lots, pilot lots, and pilot models.
"First article testing" means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

9.302 Policy.
First article testing and approval (testing and approval) is appropriate when it is cost effective and in the interests of the Government.

Nonregulation remarks
Use of first article test requirements. Testing and approval ensures that the contractor can furnish a product that conforms to all contract requirements. In deciding whether to establish a testing and approval requirement, the contracting officer should consider factors such as the impact on cost or time of delivery; the risk to the Government of foregoing such a test; and the availability of other, less costly, methods of ensuring the desired quality.
Testing and approval may be appropriate when:
- *the contractor has not previously furnished the product to the Government;*
- *the product is described by a performance specification;*
- *it is essential to have an approved first article to serve as a manufacturing standard*
- *the contractor previously furnished the product to the Government, but there have been subsequent changes in processes or specifications; production has been discontinued for an extended period of time; or the product acquired under a previous contract did not function properly.*

Exceptions. Circumstances for which testing and approval is generally not needed include (a) research or development; (b) products requiring qualification before award (e.g., when an applicable qualified products list exists; (c) products normally sold in the commercial market; or (d) products covered by complete and detailed technical specifications, unless the requirements are novel or exacting.
Commencement of production. Generally, before first article approval, the acquisition of materials or components, or the commencement of production, is at the sole risk of the contractor. To minimize this risk, you may provide sufficient time in the delivery schedule for acquisition of materials and

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components, and for production after receipt of first article approval. When Government requirements preclude this action, you may, before approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent necessary to meet the delivery schedule (see nonregulation remarks under 9.304). Costs incurred based on this authorization are normally allocable to the contract for (1) progress payments and (2) termination settlements if the contract is terminated for the convenience of the Government.

9.303 Solicitation provision.

When a testing and approval requirement is used, the contracting officer shall include in the solicitation a provision specifying the testing and approval requirements that apply.

Nonregulatory remarks.

Writing a solicitation provision.

The following may be useful in formulating a solicitation provision for testing and approval-

- *Where the contractor is to be responsible for the testing, specify (1) the performance or other characteristics that the first article must meet; (2) the detailed technical requirements for the tests that must be performed; and (3) the necessary data that must be submitted to the Government in the first article approval test report.*
- *Where the Government is to be responsible for the testing, specify the performance or other characteristics that the first article must meet and the tests to which the first article will be subjected;*
- *Permit the submission of alternative offers, one including testing and approval and the other without;*
- *Have a delivery schedule for the production quantity (see 12.104). The delivery schedule may (1) be the same whether or not testing and approval is waived; or (2) provide for earlier delivery when testing and approval is waived and the Government desires earlier delivery. In the latter case, the contracting officer should consider not using as an evaluation factor any resulting difference in delivery schedules. The nonregulation clause at 52-209-3X, First Article Approval-Government Testing, may be used for designating the delivery schedule for the first article.*
- *Provide for the submission of contract numbers, if any, to document the offeror's eligibility for a waiver of the testing and approval requirement;*
- *State whether the approved first article will serve as a manufacturing standard; and*
- *When the Government is responsible for first article testing, you may want to include the Government's estimated testing costs as a factor for use in evaluating offers.*
- *Inform offerors that prices for first articles and first article tests in relation to production quantities should not be materially unbalanced (see 15.814) if first article or first article tests are to be separately priced.*

9.304 Contract clauses.

Any testing and approval requirement shall be included in the solicitation and resultant contract.

Nonregulation remarks.

Sample clauses

Contractor Testing. You may use the nonregulation clause at 52.209-2X, First Article Approval—Contractor Testing, to satisfy the requirements of 9.304 when the contract requires first article approval and the contractor is responsible for first article testing. If the contractor is required to produce the first article and the production quantity at the same facility, you may use the clause at 52.209-2X with its Alternate I. If the contractor will be authorized to purchase material or begin production before first article approval, you may use the clause at 52.209-2X with its Alternate II. The clause at 52.209-2X may need to be modified when a cost-reimbursement contract is contemplated.

Government Testing. You may use the clause at 52.209-3X to satisfy the requirements of 9.304 when the contract requires first article approval and the Government is responsible for first article testing. If the contractor is required to produce the first article and the production quantity at the same facility, you may use the nonregulation clause at 52.209-3X with its Alternate I. If the contractor will be authorized to purchase material or commence production before first article approval, you may use the clause at 52.209-3X with its Alternate II. The clause at 52.209-3X may need to be modified when a cost-reimbursement contract is contemplated.

SUBPART 9.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 9.403); and

(3) Sets forth the consequences of this listing.

(b) This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549.

Nonregulation remarks

Subpart 9.4 does not prescribe policies or procedures governing declarations of ineligibility.

Subpart 9.4 does not cover exclusions from financial or nonfinancial assistance. These exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs (see 9.402)

9.401 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in

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accordance with this subpart, are appropriate means to effectuate this policy.
(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in this subpart.
(c) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.402 Definitions.
"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.
"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.
"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.
"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.
"Contractor," as used in this subpart, means any individual or other legal entity that—
(a) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or
(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.
"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
"Debarment," as used in this subpart, means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."
"Debarring official" means an agency head or designee authorized to impose debarment.
"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act, the Service Contract Act, and the Buy American Act.
"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.
"Parties Excluded from Procurement Programs," means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained within the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.
"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
"Suspending official" means an agency head or designee authorized to impose suspension.
"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."
"Unfair trade practices," as used in this subpart, mians the commission of any or the following acts by a contractor:
(1) A violation of Section 337 of the Traiff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.
(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposed of the Export Administration Act of 1979 (50 U.S.C. App. 24 2401 *et seq.)* or any similar bilateral or multilateral export control agreement.
(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the ageny to which such certificate was furnished.

9.403 Parties Excluded from Procurement Programs.
(a) The General Services Administration (GSA) shall compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office.
(b) Each agency shall notify GSA—
(1) Of the following information within 5 working days after the action becomes effective:
(i) The agency or organization taking the action;
(ii) The cause for the action (see 9.405-2 and 9.403-2 for causes) or other statutory or regulatory authority;
(iii) The effect of the action;
(iv) The termination date for each listing;
(v) The DUNS No.; and
(vi) The name and telephone number of the point of contact for the action.
(2) Within 5 working days after modifying or rescinding an action.

Nonregulation remarks
The List of Parties Excluded from Procurement Programs is distributed to agencies and the General Accounting Office. The list contains the name and telephone number of the officia

responsible for its maintenance and distribution as well as information provided for by 9.403. Information on the list is available as follows:

- *The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.*
- *The electronic version is updated daily and provides access to the names of firms and individuals on the list.*

9.404 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head determines that there is a compelling reason for such action (see 9.404-2, 9.405-1(c), 9.406-1(d), and 23.506(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).

9.404-1 Continuation of current contracts.

(a) Contracts awarded to a contractor prior to its debarment, suspension, or proposed debarment are unaffected and may continue in effect unless the acquiring agency's head directs otherwise.

(b)Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the acquiring agency's head states in writing the compelling reasons for renewal or extension.

Nonregulation remarks

Before you take any action to debar a contractor, you should consult with agency contracting and technical personnel and legal counsel to ensure that it is proper and in the interests of the Government.

9.404-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the acquiring agency's head states in writing the compelling reasons for this approval action. (See 9.404(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the list of Parties Excluded from Procurement Programs (see 9.403), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcon-tractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

9.405 Debarment.

9.405-1 General.

(a) If a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond (see 9.405-3(b)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless an acquiring agency's head (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.405-2, using the procedures in 9.405-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so,

made the result of the investigation available to the debarring official.
(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.
(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.
The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (d) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

Nonregulation remarks
FAR and FPMR debarments.
When you have authority to debar contractors from contracts under the FAR and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, you should consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property. When debarring a contractor from both, the debarment notice should so indicate and it should include the appropriate FAR and FPMR citations.

9.405-2 Causes for debarment.
The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:
(a) The debarring official may debar a contractor for a conviction of or civil judgment for—
(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
(2) Violation of Federal or State antitrust statutes relating to the submission of offers;
(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)): or
(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.
(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—
(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—
(i) Willful failure to perform in accordance with the terms of one or more contracts; or
(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
(2) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—
(i) The offeror's submission of a false certification;
(ii) The contractor's failure to comply with its certification; or
(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).
(3) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)).
(4) Commission of an unfair trade practice as defined in Section 9.403 (see section 201 of the Defense Production Act (Pub. L. 102-558)).
(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.405-3 Procedures.
(a) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.
(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—
(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and
(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.
(b) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—
(1) That debarment is being considered;

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(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
(3) Of the cause(s) relied upon under 9.405-2 for proposing debarment;
(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
(5) Of the agency's procedures governing debarment decisionmaking;
(6) Of the effect of the issuance of the notice of proposed debarment; and
(7) Of the potential effect of an actual debarment.
(c) *Debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.
(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.
(ii) The debarring official may reject any findings as to disputed material facts, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.
(iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.
(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.
(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—
(i) Referring to the notice of proposed debarment;
(ii) Specifying the reasons for debarment;
(iii) Stating the period of debarment, including effective dates; and
(iv) Advising that the debarment is effective throughout the Executive Branch of the Government unless the acquiring agency head makes the statement called for by 9.405-1(c).
(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

Nonregulation remarks
The debarring official may refer issues of disputed material facts to another official to make findings of fact.

9.405-4 Period of debarment.
(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Generally, a debarment should not exceed 3 years, except that debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years.
(b) The debarring official may extend a debarment for an additional period, if necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of 9.405-3 apply to the extension of the debarment.
(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as newly discovered material evidence or reversal of the conviction or civil judgment upon which the debarment was based.

9.405-5 Scope of debarment.
(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9.406 Suspension.

9.406-1 General.
(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3.

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(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in the nonregulation guidance under 9.405-1. A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 9.406-3(c)).

(d) A contractor's suspension shall be effective throughout the Executive Branch of the Government, unless an acquiring agency's head (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

Nonregulation remarks.

In assessing the adequacy of the evidence, you should consider how much information is available, how credible it is, whether important allegations are corroborated, and what inferences can reasonably be drawn as a result.

FAR and FPMR suspensions. When you have the authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6, you should consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property. When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice should so indicate and the appropriate FAR and FPMR citations be included.

9.406-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of any of the causes listed at 9.405-2(a)(1), (2), (3), (4), (5) and (b)(2) and (4). Indictment for any of those causes constitutes adequate evidence for suspension.

(b) The suspending official may, upon adequate evidence, also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.406-3 Procedures.

(a) *Decisionmaking process.* (1) Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(b) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii) seriously reflecting on the propriety of further Government dealings with the contractor. Any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under 9.406-2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(c) *Suspending official's decision.* (1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts, or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the

suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending official may reject any findings as to disputed material facts, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (see accompanying guidance). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of (i) suspension by any other agency or (ii) debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

Nonregulation remarks

The suspending official may refer issues of disputed material facts to another official for findings of fact.

9.406-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

9.406-5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see 9.405-5), except that the procedures of 9.406-3 shall be used in imposing suspension.

9.407. Responsibility Information from offerors.

The contracting officer shall obtain from offerors information as to whether the offeror and/or its principals are currently responsible.

9.408 Contract clause

The contracting officer shall insert the clause at 52.209-4X, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract exceeds $25,000.

Nonregulation remarks

Sample solicitation provision. The provision at 52.209-5X, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, may be used to satisfy the requirement at 9.407.

Treatment of information. When an offeror indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, you should consider—

- *Requesting such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.404); and*
- *Notifying the agency official responsible for initiating debarment or suspension action prior to award.*

Failure to furnish the certification or the requested information may render the offeror nonresponsible. However, you should consider giving offerors who do not furnish the certification, or other requested information, an opportunity to provide it.

SUBPART 9.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

9.500 Scope of subpart.

This subpart—

(a) Prescribes general rules for identifying, evaluating, and resolving organizational conflicts of interest;

(b) Implements section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100-463, 102 Stat. 2270-47 (1988) and Office of Federal Procurement Policy (OFPP) Letter 89-1, Conflict of Interest Policies Applicable to Consultants.

9.501 Definitions.

"Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent contractor is not a marketing consultant when rendering—

(a) Services excluded in Subpart 37.2;

(b) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);

(c) Routine legal, actuarial, auditing, and accounting services; and

(d) Training services.

"Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable

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or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

9.502 Applicability.

(a) This subpart applies to contracts with either profit or nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds.

(b) This subpart does not apply to acquisitions subject to unique agency organizational conflict of interest statutes.

Nonregulation remarks

Do advance work before releasing solicitations. You are more likely to find organizational conflicts of interest (OCI) in contracts for: management support services; consultant or other professional services; contractor performance of or assistance in technical evaluations; or systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production. When you think an OCI may be present or that a solicitation may be particularly susceptible to one, you should analyze the planned acquisition in order to identify and evaluate potential OCIs so as to eliminate or reduce as many as possible before award.

The award decision may be affected by an organizational conflict of interest. You should ordinarily avoid awarding a contract where an OCI is present. However, award may be made if a conflict cannot be removed or reduced, when it is in the Government's best interest and a request for waiver has been approved in accordance with 9.504. If you determine that an otherwise successful offeror should not receive an award because of an OCI, you should inform that offeror of your likely action and provide an opportunity for the offeror to react. The offeror may be able to remove the conflict.

9.503 General rules.

The general rules in 9.503-1 through 9.503-4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. An unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses—

(1) Proprietary information (as defined in 3.104-4(j)) that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in 3.104-4(k)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

Nonregulation remarks

General Approach for handling organizational conflicts of interest.

Information. If information concerning prospective contractors is necessary to identify and evaluate potential OCIs or to develop recommended actions, and no OCI certificates have been filed, you should should consider seeking the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

Analysis. If the you decide there is a significant potential organizational conflict of interest, before issuing the solicitation, you should prepare—

- *A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.503 or on another basis;*
- *A draft solicitation provision (see the sample solicitation provision at 9.505-1); and*
- *If appropriate, a proposed contract clause (see 9.505).*

Contract action. After a determination is made on an approach for handling the OCI, you should —

- *Include the provision(s) and any clause(s) in the solicitation or the contract, or both;*
- *Consider additional information provided by contractors in response to the solicitation or during negotiations;*
- *Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with any agency direction; and*
- *Retain all certificates submitted.*

Administration. If, during the effective period of any restriction, a contracting office transfers acquisition responsibility for the item or system involved, it is suggested that the successor contracting office be notified of the restriction.

Examples of Conflict of Interest Situations.

The following illustrate situations in which questions concerning OGI may arise. They are not all inclusive, but are intended to help you apply the general rules in 9.503 to individual contract situations.

- *Company A agrees to provide systems engineering and technical direction for the Navy on the power plant for a group of submarines (i.e., turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any power plant components. Company A can, however, supply components of the submarine unrelated to the power plant (e.g., fire control, navigation, etc.). In this example, the*

system is the power plant, not the submarine, and the ban on supplying components is limited to those for the system only.

- *Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.*
- *Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.*
- *XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.*
- *Before an ADP equipment acquisition is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on ADP hardware acquisition.*
- *Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.*
- *Company A receives a contract to prepare a detailed plan for scientific and technical training of an agency's personnel. It suggests a curriculum that the agency endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.*
- *Company A is selected to study the use of lasers in communications. The agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to (1) enter into agreements with these firms to protect any proprietary information they provide and (2) refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.*
- *An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.*

9.503-1 Providing systems engineering and technical direction.

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not (1) be awarded a contract to supply the system or any of its major components or (2) be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

9.503-2 Preparing specifications or work statements.

(a) If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. This rule shall not apply to—

(1) Contractors that furnish at Government request specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(2) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

(b) If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or service—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless—

(1) It is the sole source;

(2) It has participated in the development and design work; or

(3) More than one contractor has been involved in preparing the work statement.

Nonregulation remarks

Agreement not to compete. If you plan to issue a solicitation for development of complete specifications for nondevelopment

equipment, you should consider including a clause in the solicitations that will eliminate the winner from competing for the follow-on production contracts for a reasonable time. This precaution avoids creating a situation in which the contractor drafts specifications favoring its own products or capabilities. This helps the Government get unbiased advice on the specifications and avoids allegations of favoritism in the award of production contracts.

Development contracts. In development work, where the contractor will design or produce an item, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and perform better than firms that did not participate in the development. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is often an unavoidable one that is not considered unfair; therefore generally no prohibition on future production work would be warranted.

9.503-3 Providing technical evaluation or advisory and assistance services.

Contracts for technical evaluations of other contractors' offers or products or for advisory and assistance services (see 37.201) shall not generally be awarded to a contractor that would evaluate, or advise the Government concerning, its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the Government's interests. In this connection, consult OFPP Policy Letter 89-1, Conflict of Interest Policies Applicable to Consultants, and implementing agency regulations.

9.503-4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information furnished voluntarily without limitations on its use or available to the Government or contractor from other sources without restriction.

(b) A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(c) Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage. See the certification required for contractors and marketing consultants in the provision at 52.209-6X.

9.504 Waiver.

The Head of the Contracting Activity may waive any general rule or procedure in this subpart by determining that its application in a particular situation would not be in the Government's interest.

9.505 Solicitation provisions and contract clauses.

9.505-1 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.209-6X, Organizational Conflicts of Interest Certificate—Marketing Consultants, in solicitations, other than sealed bids, if the contract amount is expected to exceed $200,000.

(b) The contracting officer shall insert the provision at 52.209-7X, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract amount is expected to exceed $25,000.

(c) The contracting officer shall include an organizational conflict of interest provision in solicitations when an orgaonizational conflict of interest is present or when one is likely. The provision should: Refer offerors' to subpart 9.5,State the nature of the potential conflict as seen by the contracting officer;State the nature of the proposed restraint upon future contractor activities; and Depending on the nature of the acquisition, state whether or not the terms of any proposed clause and the application of subpart 9.5 to the contract are subject to negotiation.

Nonregulation remarks

Exclusions. The provisions required by 9.505-1 (a) and (b) are not appropriate for use in solicitations for—

- *Services excluded in section 37.204;*
- *Routine engineering and technical services (such as installation, operation or maintenance of systems, equipment, software components, or facilities);*
- *Routine legal, actuarial, auditing and accounting services;*
- *Training services; and*
- *Services rendered in connection with intelligence activities defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs.*

9.505-2 Contract clause.

If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a clause that specifies the nature and duration of the proposed restraint. The clause shall be included in the contract, after negotiating the clause's final terms with the successful offeror, if appropriate.

Nonregulation remarks

Clause limitations. You should generally limit the restraint imposed by a clause to a reasonable period, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. The restriction should specify termination by a specific date or upon the occurrence of an identifiable event.

SUBPART 9.6—CONTRACTOR TEAM ARRANGEMENTS

9.601 Definition.

"Contractor team arrangement" means an arrangement in which—

(a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(b) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

(a) Require consent to subcontracts (see Subpart 44.2);

(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1);

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

Nonregulation remarks

Contractor team arrangements may be desirable from both a Government and industry standpoint by enabling the companies involved to complement each other's unique capabilities and offer the Government the best combination of performance, cost, and delivery for the system or product being acquired. Contractor team arrangements may be particularly appropriate in complex research and development acquisitions.

SUBPART 9.7—DEFENSE PRODUCTION AND RESEARCH AND DEVELOPMENT POOLS

9.701 Definition.

"Pool," as used in this subpart, means a group of concerns (see 19.001) that have—

(a) Associated together in order to obtain and perform, jointly or in conjunction with each other, defense production or research and development contracts;

(b) Entered into an agreement governing their organization, relationship, and procedures; and

(c) Obtained approval of the agreement by either—

(1) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR 125); or

(2) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Contracts with pools are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act (see Subparts 9.1 and 22.6 and 41 CFR 50-201.604(d)).

(d) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(e) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

Nonregulation remarks

Upon receipt of an offer submitted by a group representing that it is a pool, you should consider verifying its approved status with the SBA District Office Director or other approving agency.

Before awarding a contract to an unincorporated pool, you should obtain from each pool member the agent authorized to sign the offer or contract on that member's behalf (i.e., certified copy of a power of attorney).

If a pool member submits an individual offer, independent of the pool, you should consider the pool agreement, along with other factors, in determining whether that pool member is a responsible contractor under Subpart 9.1.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

I. REGULATION PROVISIONS AND CLAUSES

52.209-1X Qualification Requirements.
As prescribed in 9.206, insert the following clause:

QUALIFICATION REQUIREMENTS (DATE)

(a) Definition: "Qualification requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name)_____

(Address)_____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name_____

Manufacturer's Name _____

Source's Name_____

Item Name_____

Service Identification_____

Test Number _____ (to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.209-4X Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
As prescribed in 9.408, insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DATE)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.403 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

52.209-6X Organizational Conflicts of Interest Certificate—Marketing Consultants.
As prescribed in 9.505-1(a), insert the following provision:

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ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—MARKETING CONSULTANTS (DATE)

(a) *Definitions.*

(1) "Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent Contractor is not a marketing consultant when rendering—

(i) Services excluded in FAR 37.204;

(ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);

(iii) Routine legal, actuarial, auditing, and accounting services; or

(iv) Training services.

(2) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is, or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described in paragraph (c) of this provision, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by, or to be rendered by, the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s) and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person.)

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the Contracting Officer a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other actions provided for by law or regulation.

(End of provision)

52.209-7X Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.

As prescribed in 9.505-1(b), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—ADVISORY AND ASSISTANCE SERVICES (DATE)

(a) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12* months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contrac

number under which the services were rendered must also be included, if applicable.

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the Contracting Officer or his or her representatives.

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Failure of the offeror to provide the certification may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

II. NONREGULATION SAMPLE PROVISIONS AND CLAUSES

52.209-2X First Article Approval—Contractor Testing.

As discussed in the non regulation remarks under 9.304, the following clause, or any variant, may be used:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (DATE)

*(a) The Contractor shall test (*) unit(s) of Lot/Item (*) as specified in this contract. At least (*) calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.*

*(b) The Contractor shall submit the first article test report within (*) calendar days from the date of award of this contract to (**) marked "FIRST ARTICLE TEST REPORT: Contract No. (*), Lot/Item No. (*)". Within (*) calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.*

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

** Contracting Officer shall insert details.*

*** Contracting Officer shall insert the name and address of the Government activity that will receive the report.*

(End of clause)

Alternate I (DATE). Add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (DATE). Substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for

(1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52-209-3X First Article Approval—Government Testing.

As suggested by the non-regulation remarks under 9.304, the following clause may be used:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (DATE)

*(a) The Contractor shall deliver (*) unit(s) of Lot/Item (*) within (*) calendar days from the date of award of this contract to the Government at (**) for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.*

*(b) Within (*) calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.*

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the -Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraphs (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

** Contracting Officer shall insert details.*

*** The Contracting Officer shall insert the name and address of the testing facility.*

(End of clause)

Alternate I (DATE). Add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (DATE). Substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-5X Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As suggested by the non regulation remarks under 9.407, the following provision may be used:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DATE)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

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(i) The Offeror and/or any of its Principals—

(A) Are [ ] are not [ ] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [ ] have not [ ] within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are [ ] are not [ ] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has [ ] has not [ ] within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Pecos, San Miguel County, NM

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Pecos, located in San Miguel County, New Mexico, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until October 4, 1994.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person:

Mr. Stefan J. Vranka, Resolution Trust Corporation, c/o Nevander Asset Management, Inc., 4665 MacArthur Court, Suite 200, Newport Beach, CA 92660, (714) 851–2530; Fax (714) 752–7057

SUPPLEMENTARY INFORMATION: The Pecos property consists of two (2) non-continguous 80-acre tracts of undeveloped land located east and southeast of Pecos, New Mexico. One 80-acre tract is located 2.25 miles south of Lower Colonias and the other tract is one mile north of Upper Colonias. The sites contain habitat for the Federally-listed endangered peregrine falcon and a rare plant that is proposed for Federal-listing as endangered. Both tracts are bordered by portions of the Santa Fe National Forest and small corners of each tract fall within a 100-year floodplain. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before October 4, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form: Notice of Serious Interest RE: [insert name of property] Federal Register Publication Date: _____ [insert Federal Register publication date].

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: June 29, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–16252 Filed 7–5–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34272; File No. SR–Amex–94–12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Its Listing Fee Schedule for Listed Companies

June 28, 1994.

On May 3, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its original listing fees for stock issues.

The proposed rule change was noticed in Securities Exchange Act Release No. 34133 (May 31, 1994), 59 FR 29308 (June 6, 1994). No comments were received on the proposal.

The Amex is amending Section 140 of its Listing Standards and Requirements relating to the fees charged to listed companies for the original listing of common stock. Specifically, the Exchange is amending Section 140 to adopt a maximum fee applicable to the original listing of stock issues on the Exchange.

Currently, the listing fee for stock issues ranges from $5,000 for new listings of less than one million shares to more than $122,500 for listings of greater than 100 million shares. In addition, each issuer which does not already have securities listed on the Exchange is assessed a one-time charge of $5,000. Listing fees for non-U.S. issuers listed on foreign stock exchanges are currently 50 percent of the rates for U.S. companies, including the $5,000 one-time charge, with a maximum of $30,000.

The Exchange is amending Section 140 to adopt a maximum fee of $45,000 ($50,000 inclusive of the one-time charge of $5,000) for stock issues exceeding 15 million shares. In addition, the Exchange is reducing the maximum listing fee for non-U.S. issuers already listed on a foreign exchange from $30,000 to $25,000, inclusive of the one-time charge.[3]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Section 140 is amended to require the following fees:

Less than 1 million shares—$5,000
1+— 2 million shares—$10,000
2+— 3 million shares—$15,000
3+— 4 million shares—$17,500
4+— 5 million shares—$20,000
5+— 6 million shares—$22,500
6+— 7 million shares—$25,000
7+— 8 million shares—$27,500
8+— 9 million shares—$30,000
9+—10 million shares—$32,500
10+—15 million shares—$37,500
15+ million shares—$45,000

In addition to the above per-share fee, there is a one-time charge of $5,000 for companies that do not have a stock or warrant issue listed on the Exchange. (The one-time charge of $5,000 does not apply to any company which previously paid the one-time charge in connection with the listing of a debt issue.)

In the case of non-U.S. companies listed on foreign stock exchanges, the fee, including the one-time charge, is 50% of the rates set forth above, with a maximum fee of $25,000. Where the original listing of more than one class of stock is included

Continued

The Exchange believes, based upon discussions with prospect companies, that each year several large companies elect not to list on the Amex due to the expense of the Exchange's listing fee at the upper end of the fee schedule.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[4] More specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. The Commission believes that the reduced original listing fees for stock issues exceeding 15 million shares are not unfairly discriminatory as proscribed by Section 6(b)(5) of the Act.[5]

The Commission believes that adopting a maximum original listing fee for stock issues exceeding 15 million shares is consistent with Section 6(b)(4) of the Act in that it reasonably balances the Exchange's interest in attracting large companies for listing with its regulatory interests in listing only bona fide companies on the Exchange. For example, although decreasing listing fees for issues over 15 million shares should attract additional larger issuers to its market, as well as provide an incentive for current Exchange issuers to list their new issues on the Amex, the fee amendment will not affect the Amex's quantitative criteria for listing stock on the Exchange. Moreover, the adoption of a maximum fee provides for a more equitable allocation of listing fees among issuers and should eliminate any disincentive for large issuers to list on the Amex.

The Commission also believes that reducing the maximum fee applicable to original listings of stock for non-U.S. companies listed on foreign stock exchanges from $30,000 to $25,000 (inclusive of the $5,000 one-time charge) is consistent with Section 6(b)(5) of the Act in view of the reduction in fees for U.S. companies with issues exceeding 15 million shares.

Accordingly, the Commission believes that it is appropriate to approved the proposed rule change.

in the same application, the fee is based on the aggregate number of shares of all such classes.

[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78f(b)(5) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–94–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16244 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

June 29, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Chemical Banking Corp.
Adj. Rate Cm. Pfd. Stock, Ser. L, $1.00 Par Value (File No. 7–12616)
ConAgara Capital L.C.
Ser. B Adj. Rate Cm. Pfd. Securities (File No. 7–12617)
Energy Ventures, Inc.
Common Stock, $1.00 Par Value (File No. 7–12618)
Essex Property Trust
Common Stock, $.0001 Par Value (File No. 7–12619)
Gerrity Oil & Gas Corp.
Depositary Shares (rep. 1/8 sh. of $12.00 Cv. Pfd. Stk., $.01 Par Value (File No. 7–12620)
Great Western Financial
8.75% Cm. Cv. Dep. Pfd., $1.00 Par Value (File No. 7–12621)
Highwoods Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12622)
Kenneth Cole Productions, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–12623)
Liberty Property Trust
Common Shares of Beneficial Interest, $.001 Par Value (File No. 7–12624)
PLC Capital L.L.C.
9% Cm. Monthly Inc. Pfd. Sec. Ser. A, ("MIPS"), $25.00 Par Value (File No. 7–12625)
Storage Equities, Inc.
Adj. Rate Cm. Pfd. Stock, Ser. C, $.01 Par Value (File No. 7–12626)
Watsco, Inc.
Common Stock, $.50 Par Value (File No. 7–12627)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 21, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16243 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Designatronics Incorporated, Common Stock, $.04 Par Value) File No. 1–8543

June 29, 1994.

Designatronics Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on June 2, 1994, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing

market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASD/NMS system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NASD/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before July 21, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16242 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on July 28, 1994 at 9 a.m. Arrange for oral presentations by July 18, 1994.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 28, 1994, a McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia. The agenda for the meeting will include:

- Opening Remarks.
- A review of the activities of the Performance Standards Working Group.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 18, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on June 28, 1994.

Daniel Salvano,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–16266 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–28; Notice 2]

Determination That Nonconforming 1992 Porsche 911 Carrera 2 and Carrera 4 Passenger Cars Are Eligible for Importation

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

ACTION: Notice of determination by NHTSA that nonconforming 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified versions of the 1992 Porsche 911 Carrera 2 and Carrera 4), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligiblity determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer R–90–004) petitioned NHTSA to determine whether 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 25, 1994 (59 FR 19748) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. The petition covers both the 2-wheel drive Carrera 2 and the 4-wheel drive Carrera 4. The notice referred collectively to these vehicles as the "1992 Porsche 911 Carrera 2/4." No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 52 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and are capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 30, 1994.

William S. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–16296 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the ninth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods and to report on progress in harmonizing hazardous material transportation regulations with Mexico.

DATES: July 20, 1994 at 9:30 a.m.

ADDRESSES: Room *6200–6204,* Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to (1) review the progress made by the ninth session of the Sub-Committee of Experts on the Transport of Dangerous Goods in completing its work program for the 1993–1994 biennium and (2) to begin preparation for the Committee of Experts on the Transport of Dangerous Goods eighteenth session to be held November 28 through December 7, 1994 in Geneva, Switzerland. Topics to be covered include matters related to explosives including packaging requirements for explosives, amendments to the tests and criteria for classifying dangerous goods, criteria for liquid and solid oxidizing substances, amendments to portable tank requirements, matters related to compressed gases, listing and classification issues, requirements for individual substances, packaging requirements for dangerous goods, requirements for limited quantities of dangerous goods, segregation requirements, matters related to infectious substances, criteria for environmentally hazardous substances, international activities related to harmonization of chemical classification and labeling requirements and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods. The opportunity of this meeting will also be used to report on the activities related to the harmonization of hazardous materials regulations in North America, with particular emphasis on progress in harmonizing regulations with Mexico.

The public is invited to attend without prior notification.

Issued in Washington, DC, on June 30, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–16299 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Tomb Treasures from China: The Buried Art of Ancient Xi'an" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of San Francisco, California from on or about August 3, 1994 to on or about October 30, 1994; Kimbell Art Museum, Fort Worth, Texas from on or about November 19, 1994 to on or about February 12, 1995; Honolulu Academy of Arts, Hawaii from on or about March 16, 1995 to on or about June 18, 1995 is in national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: June 29, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–16303 Filed 7–5–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 128
Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

DATES: August 22–24, 1994, 9:00 a.m. to 5:00 p.m.

LOCATION: The Westin Hotel Seattle, 1900 Fifth Avenue, Seattle, Washington 98101, (206) 728–1000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW., Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by August 1, 1994.

The quarterly meeting of the National Council shall be open to the public and conducted in a smoke-free atmosphere. In addition, those attending should be mindful that the use of aromatic fragrances might affect people with environmental and chemical sensitivities.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director.
Committee Meetings and Committee Reports.
Unfinished Business.
New Business.
Announcements.
Adjournment.

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 1, 1994.

Edward P. Burke,

Acting Executive Director.

[FR Doc. 94–16448 Filed 7–1–94; 3:11 pm]

BILLING CODE 6820–BS–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 4, 11, 18, and 25, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 4

There are no meetings scheduled for the Week of July 4.

Week of July 11—Tentative

There are no meetings scheduled for the Week of July 11.

Week of July 18—Tentative

Tuesday, July 19

10:00 a.m.
Briefing On Fuel Cycle and Waste Management Activities In France (Public Meeting)

Wednesday, July 20

10:00 a.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)
11:30 a.m.
Affirmation/Discussion And Vote (Public Meeting)

Thursday, July 21

3:00 p.m.
Briefing on Decommissioning Process (Public Meeting)
(Contact: David Futoma, 301–504–1621)

Friday, July 22

10:00 a.m.
Briefing on Information Technology Strategic Plan (Public Meeting)
(Contact: Francine Goldberg, 301–415–7460)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: June 30, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–16476 Filed 7–1–94; 3:42 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
July 6, 1994

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 392 and 393

Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles and Protection Against Shifting or Falling Cargo; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 393

[FHWA Docket No. MC–93–19]

RIN 2125–AD17

Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the requirements for warning devices for stopped commercial motor vehicles (CMVs) to allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles, unless the CMV is transporting certain hazardous materials or is powered by compressed gas. It is the intent of this final rule to give equal priority to fusees and liquid-burning flares with regard to use as emergency warning devices. This action is required by the Intermodal Surface Transportation Efficiency Act of 1991.

DATES: Effective August 5, 1994. The incorporation by reference of the publication listed in § 393.95 of this final rule is approved by the Director of the Federal Register as of August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 1993), signed by the President on December 18, 1991, requires that "Section 393.95 of title 49 of the Code of Federal Regulations shall be applied so that fusees and flares are given equal priority with regard to use as reflecting signs."

On July 14, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to amend § 393.95 to allow commercial motor vehicles to be equipped with fusees and liquid-burning flares in lieu of bidirectional reflective triangles, except CMVs transporting explosives (Division 1.1, 1.2, and 1.3 hazardous materials), cargo tank motor vehicles used for flammable and combustible liquids (Class 3 hazardous materials) or flammable gas (Division 2.1 hazardous materials) (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. The FHWA also proposed amending § 392.22(b), which sets forth requirements for the placement and use of warning devices for stopped vehicles, because paragraph (b) did not allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles.

The FHWA proposed that vehicles be equipped with either (1) three bidirectional reflective triangles or (2) six fusees or liquid-burning flares. With regard to performance standards for fusees and liquid-burning flares, the FHWA proposed to amend § 393.95(j) to require that these devices be capable of burning for at least 30 minutes, and meet the standards of the Underwriters Laboratories, Inc., Highway Emergency Signals (UL 912).

Discussion of Comments

The FHWA received 12 comments to the NPRM. The commenters were: 3M; Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); Chemical Waste Transportation Institute (CWTI); Cortina Tool and Molding Company; James King and Company, Inc.; Federal Mogul; National Tank Truck Carriers, Inc.; Ohio University, College of Engineering and Technology, Department of Industrial and Systems Engineering; Pyrotechnic Signal Manufacturers Association (PSMA); Sate-Lite Manufacturing Company (Sate-Lite); and the Transportation Safety Equipment Institute (TSEI). The commenters were generally opposed to allowing the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The CWTI did not support or oppose the proposal but indicated that the FHWA should retain its restrictions on flame producing devices on certain vehicles and recommended that the FHWA use this rulemaking to amend § 393.95(g) to incorporate the use of the current hazardous materials classifications (i.e., Divisions 1.1, 1.2, or 1.3, 2.1 and Class 3). The PSMA provided the only comments in support of the proposed amendments.

Interpretation of Section 1041(b) of the ISTEA

Several of the commenters questioned the FHWA's interpretation of section 1041(b) of the ISTEA. Sate-Lite believes that section 1041(b) is ambiguous and as such the FHWA has great latitude in the implementation of the requirement. Sate-Lite stated:

By explicitly acknowledging the safety hazards associated with fusees and flares and by specifically addressing these hazards by prohibiting the use of fusees and flares in certain situations, the FHWA has recognized that ISTEA granted the FHWA broad discretion in implementing Section 1041(b).

Clearly Congress did not anticipate or intend to require that the FHWA sacrifice motorist safety and the security of our federal highway system on the altar of "equal priority." As the FHWA has recognized, on these issues of motorist safety, Congress must defer to the expertise and judgment of the FHWA.

In light of the dangers and manifest deficiencies inherent in the use of fusees and flares as a substitute for warning triangles * * * Sate-Lite respectfully urges the FHWA to exercise its discretion by amending the proposed rule change. Sate-Lite strongly believes that the FHWA should continue to require motor carriers to carry three emergency warning triangles in accordance with the current rule.

In its comments, the ATA stated:

The language of Section 1041(b) of the [ISTEA] strongly suggests that its sponsor(s) believe[s] that a fusee and a liquid-burning flare are essentially similar * * *. It should be made clear that fusees are acceptable only as a short-term warning device for use while long-term warning devices are put in place. In addition, it should be made clear that the trucking industry abandoned the use of liquid-burning flares (pot torches) as soon as the use of a superior type of warning device (the "dot-over-dot" emergency reflectors) was authorized by federal and state regulators.

For the reasons outline[d] above, liquid-burning flares have not been manufactured for 30 years, or more. In our view, the current effort to encourage a return to their use by the motor carrier industry is a step backward.

Advocates did not believe that the ISTEA prohibits the FHWA from continuing to require that each CMV be equipped with three bidirectional reflective triangles.

The FHWA believes that section 1041(b) of ISTEA requires that fusees and liquid-burning flares be allowed, but not mandated, in lieu of bidirectional reflective triangles. The FHWA already allows the use of fusees and other warning devices in addition to reflective triangles.

With regard to the ATA's comments about liquid-burning flares, or "pot

torches," the ISTEA refers to "fusees and flares." The FHWA believes the term "fusee" refers to a solid material that is ignited by friction and the term "flare" refers to a liquid-burning warning device. These terms, as used in the ISTEA, are not interchangeable. As such, the ISTEA allows the use of fusees and liquid-burning flares as primary emergency warning devices. While the apparent lack of availability of liquid-burning flares, as indicated by the ATA, might preclude their use as an alternative to bidirectional reflective triangles, the requirement of the ISTEA is not contingent upon the availability of the warning device.

In response to the Advocates' concerns, the FHWA does not believe it would be appropriate to require all CMVs to carry bidirectional reflective triangles. For those cases in which the CMV is equipped only with fusees or liquid-burning flares, the NPRM proposed, and this final rule includes, an amendment to § 392.22 stating that there shall be at least one lighted fusee or liquid-burning flare at each of the locations specified in § 392.22(b)(1) for the entire period that the vehicle is stopped. If a motor carrier chooses to rely solely upon fusees or liquid-burning flares as emergency warning devices, the motor carrier should not be penalized by being forced to carry an additional warning device that, under these circumstances, it would not be required to use.

Effectiveness of Fusees and Liquid-Burning Flares Versus Triangles

Many of the commenters opposed the use of fusees in lieu of bidirectional reflective triangles because of concerns about the effectiveness of fusees as emergency warning devices. The Advocates stated:

Unfortunately, the elevation of fusees and liquid-burning flares to the status of primary warning devices alongside triangles is a regressive step that can have serious consequences in the potential for additional truck and bus accidents. Although there are major shortcomings with the design and performance of reflective triangles, and with the criteria for deploying them set forth in the Federal Motor Carrier Safety Regulations (FMCSR), the selection of a single device having priority in all circumstances appropriately fulfills the well-known principle of traffic engineering that motorists should always be reinforced in their traffic control expectations when negotiating roads and streets. That is, it is important to educate motorists to the unambiguous intent of traffic control devices by ensuring the use of designs with unvarying shapes, sizes, colors, and messages. Despite the fact that Advocates has serious misgivings over the retroreflective performance and conspicuity of emergency triangles, there is little question that their consistent use over the past two decades has provided instant recognition by motorists that there is a disabled commercial vehicle on or near the travelway. This important recognition by motorists can now be threatened by the substitution of flares or fusees to demarcate the area around a disabled truck or bus.

Several commenters cited an article published in the April 1992 issue of *Consumer Reports* magazine. For example, Sate-Lite stated:

A widely publicized recent study on the effectiveness of vehicle warning devices, in *Consumer Reports Magazine* [sic] [*Consumer Reports*, "Emergency! Handling Trouble on the Road," April 1992], concluded without reservation that triangle reflectors are the best choice of warning device for all vehicles." The *Consumer Reports* Study cites the fact that triangles can be placed as far away from the vehicle as needed and the fact that they do not require electric power. Moreover, flares and fusees: (1) Flares do not command attention because "their light comes from one small source and isn't very conspicuous at a distance"; (2) a flare's light may not last until help arrives; (3) there is the obvious need for periodic replacement of flares; and (4) flares will frequently roll or blow away from their initial site. These problems and deficiencies should be obvious even to the casual observer of highway conditions. The *Consumer Reports* study concluded that "Triangles provided the clearest warning from 100 feet at night."

Some commenters also referred to a National Highway Traffic Safety Administration report entitled "Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles" (August 19, 1986) (NHTSA Report) to support their claims that bidirectional reflective triangles are more effective than fusees as emergency warning devices.

While the FHWA understands the concerns of the commenters, it notes that this rulemaking is in response to section 1041(b) of the ISTEA. Section 1041(b) requires that § 393.95 be applied so that fusees and liquid-burning flares are given "equal priority" with bidirectional reflective triangles as emergency warning devices. The congressional mandate is not contingent upon an evaluation of the effectiveness of fusees and liquid-burning flares relative to that of bidirectional reflective triangles.

In addition, this rulemaking is not intended to require the use of fusees and liquid-burning flares, but rather to allow their use as a primary emergency warning device on certain CMVs. This final rule does not require motor carriers to discontinue the use of bidirectional reflective triangles in favor of warning devices they believe to be less effective.

Mixtures of Warning Devices

The NPRM requested comments on whether or not motor carriers should be allowed to use a mixture of fusees, liquid-burning flares, and bidirectional reflective triangles (e.g., a bidirectional triangle at one of the three locations warning devices are required to be deployed, and fusees at the other locations). Sate-Lite and the TSEI believed that allowing a mixture of warning devices would contribute to motorist confusion and uncertainty in associating the warning devices with the stopped CMV.

The FHWA agrees with the commenters concerns about motorist ability to understand the warning devices. The FHWA believes that the effectiveness of the three warning devices placed around the stopped vehicle would be diminished by allowing a different type of device to be used at each location. Therefore, § 392.22 is being amended to require that the same type(s) of warning devices be used at each of the locations specified in § 392.22.

Minimum Number of Fusees and Flares Required

The FHWA proposed that CMVs equipped with only fusees or liquid-burning flares have a minimum of six of these warning devices at all times. The ATA believed the proposed minimum was unrealistic. The ATA believed that the one hour of protection provided by six 30-minute fusees would not be sufficient based on what they considered the "best available information" on the duration of CMV breakdown time under "optimum" conditions. The ATA also pointed out that UL 912 specifies that each liquid-burning flare be capable of burning for 12 hours and that three of these devices should be sufficient.

The FHWA believes that a requirement for six fusees is appropriate. As stated in the NHTSA Report:

Roughly one-half of all emergency stops and disabled vehicle situations last for more than 30 minutes * * *. Moreover, since the distribution of emergency stop durations is highly

positively skewed, the total disabled vehicle exposure time for the time period of more than 30 minutes is considerably greater than for the time period of less than 30 minutes. No statistics are available to compare the "total risk" incurred after 30 minutes to that incurred before 30 minutes, but presumably the risk per minute is greatest soon after the emergency stop * * *. However, the total exposure time of disabled vehicles is greater after 30 minutes due to those vehicles left for several hours or more.

The FHWA recognizes that a number of factors affect the amount of time a vehicle remains disabled, including its location (e.g., urban area versus a rural area) and the availability of maintenance personnel and equipment. The FHWA believes that the performance-based requirement that warning devices be in place for the entire period the vehicle is stopped adequately addresses this issue. Motor carriers are responsible for ensuring that a sufficient number of warning devices are provided on their CMVs.

With regard to the ATA's comments about liquid-burning flares, the FHWA agrees that the proposed requirement for six liquid-burning flares was inconsistent with the UL 912 performance criteria which was proposed for incorporation by reference. Because UL 912 requires that liquid-burning flares be capable of burning for 12 hours, requiring three liquid-burning flares for vehicles which are not equipped with fusees or bidirectional reflective triangles is sufficient.

Incorporation by Reference of UL 912

The NPRM included a proposal that fusees and liquid-burning flares meet UL 912. In the case of fusees, UL 912 would be used to replace the § 393.95(j) reference to the Association of American Railroads (AAR), "Specifications for Red Railway or Red Highway Fuses." The ATA and the PSMA were the only commenters that addressed this issue. The ATA believed the FHWA should allow the use of fusees meeting either UL 912 or the AAR standards. The PSMA believed the performance standards of UL 912 are appropriate.

The FHWA has reviewed the UL and AAR standards. The two documents have comparable performance criteria for fusees. However, the UL document provides performance criteria for both fusees and liquid-burning flares while the AAR document only covers fusees. The FHWA has concluded the UL document is appropriate for incorporation by reference because the ISTEA requires that both fusees and liquid-burning flares be allowed for use as emergency warning devices.

In addition to the requirements contained in UL 912, the PSMA suggested that all fusees be of the "lay-down type" with a "no-roll device." The PSMA did not provide any discussion of this suggestion.

A requirement that all fusees be of the "lay-down type" is unnecessarily design restrictive in that it would prohibit, without technical justification, the use of fusees that are provided with a means to remain in an upright position.

With regard to a "no-roll device," motor carriers must ensure that warning devices are in place at the required locations. If certain devices are necessary to keep fusees in place, the motor carrier is responsible for providing them. Furthermore, a general requirement for a "no-roll device" would not provide objective criteria as to what constitutes an acceptable device. The FHWA has not adopted the PSMA's suggestions.

Economic Impact of the Rulemaking

Both Sate-Lite and the TSEI submitted comments to the docket expressing concern over possible adverse effects of the proposed regulation on small entities. These comments are discussed below under the heading "Regulatory Flexibility Act."

Discussion of Final Rule

The FHWA is amending § 393.95 to allow CMVs to be equipped with fusees and liquid-burning flares in lieu of bidirectional reflective triangles, except CMVs transporting Division 1.1, 1.2, or 1.3 hazardous materials (explosives), cargo tank motor vehicles used for Class 3 (flammable and combustible liquid) or Division 2.1 (flammable gas) hazardous materials (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. This prohibition is necessary to minimize the risk of explosion or catastrophic fire involving cargoes and fuels of these types. The FHWA believes the retention of this provision is consistent with congressional intent.

The final rule amends § 393.95(f)(2) to require that CMVs be equipped with either (1) three bidirectional reflective triangles, (2) six fusees (each capable of burning for 30 minutes), or (3) three liquid-burning flares (filled with a sufficient amount of fuel to burn continuously for at least one hour). Although the FHWA has specified a minimum number of fusees and liquid burning flares, motor carriers relying solely upon these devices are responsible for ensuring that fusees or liquid-burning flares are in use for the entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway.

The FHWA is amending § 392.22(b)(1) to require that the same type(s) of warning devices be used at each of the locations where warning devices are placed around the CMV. Section 392.22(b)(2)(i) *Fusees and liquid-burning flares*, is being amended to require that motor carriers relying solely upon fusees or liquid-burning flares ensure that those devices are in use for the entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway. The driver of the vehicle is required to extinguish and remove each fusee or liquid-burning flare before the stopped vehicle is moved.

In addition, the FHWA is amending § 392.22(b)(2)(ii) *Daylight hours*, to allow motor carriers to use fusees or liquid-burning flares in lieu of bidirectional reflective triangles when their CMVs are stopped during daylight hours in business or residential districts. Section 392.22(b)(2)(ii) requires that if fusees or liquid-burning flares are used, there must be at least one lighted fusee or flare at each of the prescribed locations as long as the vehicle is stopped.

The FHWA is removing § 392.22(b)(2)(vii) Exemption for lightweight vehicles, and certain United States Code and CFR citations at the end of § 392.22. Although the NPRM did not address these issues, the amendments are considered administrative in nature.

On May 19, 1988 (53 FR 18042), the FHWA published a final rule implementing the requirements of the Motor Carrier Act of 1984. The May 19, 1988, final rule included a definition of commercial motor vehicle which with certain exceptions, excluded lightweight vehicles (vehicles with a gross vehicle weight rating of 10,000 pounds or less) from the applicability of the FMCSRs. Therefore, the vehicles for which paragraph (b)(2)(vii) was intended are generally not subject to the FMCSRs and paragraph (b)(2)(vii) is obsolete.

With regard to performance standards for fusees and liquid-burning flares, the FHWA is amending § 393.95(j) to require that both fusees and liquid-burning flares meet the standards of the Underwriters Laboratories, Inc., Highway Emergency Signals (UL 912). The final rule incorporates by reference UL 912 in § 393.95.

The FHWA has created a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51 and to provide information on the availability of the incorporated

document. After a review of the comments to the July 14, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted UL 912 to the Director of the Federal Register for approval in accordance with 5 U.S.C. 522(a) and 1 CFR 51.

The FHWA recognizes that some motor carriers may wish to supplement the required warning devices (reflective triangles or fusees and flares) with other warning devices such as electric lanterns. The final rule allows the use of other warning devices in addition to, but not in lieu of, the required devices provided they do not decrease the effectiveness of the required devices. The FHWA has added § 393.95(f)(3) to clearly indicate this intent.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule amends the requirements for warning devices for stopped vehicles. The FHWA has determined that this is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows motor carriers the option to use fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The rule does not increase the cost of complying with the requirements for emergency warning devices on commercial motor vehicles. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In their comments to the docket, both Sate-Lite and the TSEI expressed concern that the proposed regulation would have adverse impacts on small manufacturers of bidirectional reflective triangles and small motor carriers electing to deploy fusees or liquid-burning flares in accordance with this final rule.

In light of these concerns, and in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rulemaking on small entities. As for small manufacturers of bidirectional reflective triangles, the final rule does not prohibit or restrict the manufacture, sale, or use of such devices. Furthermore, this final rule does not require motor carriers to increase the number and types of warning devices carried on their CMVs. Nor does the rule mandate that CMVs be equipped with only one type of warning device. Rather the rule fulfills the requirements of section 1041(b) of the ISTEA by simply allowing, with few exceptions, the use of fusees and liquid-burning flares as an alternative to bidirectional reflective triangles.

Based on its evaluation of this rulemaking, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects in 49 CFR Parts 392 and 393

Highway safety, Highways and roads, Incorporation by reference, Motor carriers, and Motor vehicle safety.

Issued on: June 23, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, by amending parts 392 and 393 as set forth below:

PART 392—DRIVING OF MOTOR VEHICLES

1. The authority citation at the end of § 392.22 is removed and the authority citation for part 392 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. Section 392.22 is amended by removing paragraph (b)(2)(vii), revising paragraph (b)(1) introductory text, (b)(2)(i), and (b)(2)(ii), and adding paragraph (b)(1)(iv) to read as follows:

§ 392.22 Emergency signals, stopped vehicles.

* * * * *

(b) *Placement of warning devices*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a vehicle is stopped on the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall as soon as possible, but in any event within 10 minutes, place the warning devices with which the vehicle is equipped in conformance with the requirements of § 393.95 of this subchapter, in the following manner:

* * * * *

(iv) The same type of required emergency warning device [see § 393.95(f) (1) and (2)] shall be placed at each of the three locations specified in paragraph (b)(1) (i) through (iii) of this section. If supplemental warning devices are also used [see § 393.95(f)(3)], a device of the same type shall be placed at each of those locations.

(2) *Special Rules*—(i) *Fusees and liquid-burning flares.* The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the vehicle is stopped. Before the stopped vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) *Daylight hours.* Except as provided in paragraph (b)(2)(iii) of this

section, during the period lighted lamps are not required, three bidirectional reflective triangles, or three lighted fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the vehicle is stopped or parked.

* * * * *

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATIONS

3. The authority citation for part 393 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

4. A new section 393.7 is added to subpart A of part 393 to read as follows:

§ 393.7 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the **Federal Register** has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the **Federal Register** and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2)–(9) [Reserved]

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW., Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D; and

(ii) The Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC.

5. Section 393.95 is amended by revising paragraphs (f)(2), (g), and (j) and adding paragraph (f)(3) to read as follows:

§ 393.95 Emergency equipment on all power units.

* * * * *

(f) * * *

(2) *Vehicles equipped with warning devices on and after January 1, 1974.*

(i) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, § 571.125 of this title; or

(ii) At least 6 fusees or 3 liquid-burning flares. The vehicle must have as many additional fusees or liquid-burning flares as are necessary to satisfy the requirements of § 392.22.

(3) *Supplemental warning devices.* Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) *Restrictions on the use of flame-producing devices.* Liquid-burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any commercial motor vehicle transporting Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the transportation of Division 2.1 (flammable gas) or Class 3 (flammable liquid) hazardous materials whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel.

* * * * *

(j) *Requirements for fusees and liquid-burning flares.* Each fusee shall be capable of burning for 30 minutes, and each liquid-burning flare shall contain enough fuel to burn continuously for at least 60 minutes. Fusees and liquid-burning flares shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals, Fourth Edition, July 30, 1979, (with an amendment dated November 9, 1981). (See § 393.7(b) for information on the incorporation by reference and availability of this document.) Each fusee and liquid-burning flare shall be marked with the UL symbol in accordance with the requirements of UL 912.

* * * * *

[FR Doc. 94–16070 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–22–P

49 CFR Part 393

[FHWA Docket No. MC–93–21]

RIN 2125–AD18

Parts and Accessories Necessary for Safe Operation; Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the cargo securement requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to adopt the use of working load limits in specifying the minimum strength of cargo securement devices. The amendment requires that the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction be at least ½ times the weight of the article secured. In addition, a table of working load limits is being included in the FMCSRs to provide motor carriers with a means of determining the number of tiedown assemblies required. It is the intent of this final rule to make the tiedown requirements easier to understand, use, and enforce. This action is in response to a petition from the Commercial Vehicle Safety Alliance (CVSA).

DATES: Effective August 5, 1994. The incorporation by reference of the publications listed in § 393.102(b) of this final rule is approved by the Director of the Federal Register as of August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1990, the CVSA petitioned the FHWA to change the criterion for cargo tiedown assemblies from "static breaking strength" to "working load limit." The CVSA contends the static breaking strength of a tiedown assembly is a rating that incorporates no safety factor, though the rule itself does include such a factor. The CVSA also believes the use of working load limits will make the tiedown regulations easier to understand, use, and enforce. The

petitioner asserts that working load limit is the strength criterion commonly used by the chain, cordage, wire rope, and web sling industries and that the term is widely known in the trucking industry. The use of the working load limits would thus promote direct correlation between the rule and the capabilities labeled on or indicated by load securement equipment.

The CVSA proposed that the first sentence of § 393.102(b) be amended to read "Except for integral securement devices * * * the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least ½ times the weight of that article." The CVSA also proposed that chain, webbing, wire rope, and cordage meet certain manufacturing specifications or standards.

On September 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) (58 FR 48624) to adopt the use of working load limits and the incorporation by reference of chain, webbing, wire rope, and cordage manufacturing standards. Although the CVSA petition did not discuss standards for steel strapping, the FHWA proposed that Federal Specification No. A–A–880, Strapping, Steel Flat and Seals (May 13, 1980), be incorporated by reference because § 393.102 had referenced Federal Specification No. QQ–S–781 which has been cancelled. The FHWA believed it was necessary to retain specific requirements for steel strapping and that Federal Specification No. A–A–880 was an appropriate replacement.

The FHWA also proposed to create a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51, as well as to include information on the availability of documents incorporated by reference.

Discussion of Comments

The FHWA received 23 comments to the NPRM. Several commenters provided more than one docket submission. The commenters were: Advocates for Highway and Auto Safety (Advocates); American Trucking Associations, Inc. (ATA); Department of California Highway Patrol (CHP); Commercial Vehicle Safety Alliance (CVSA); Connecticut Department of Motor Vehicles (Connecticut); Cooper Tools; The Cordage Institute; The Crosby Group, Inc.; Great American Lines, Inc.; Illinois Department of Transportation (Illinois); Kinedyne Corporation; Maine State Police (Maine); The National Industrial Transportation League; New York Department of Transportation (New York); Owner-Operator Independent Drivers Association, Inc. (OOIDA); United States Representative Jack Quinn, 30th District, New York; Steel Service Center Institute; Truck Trailer Manufacturers Association (TTMA); and Mrs. Richard B. Wilson.

Use of Working Load Limits

The commenters were generally in favor of amending § 393.102(b) to incorporate the use of working load limits. The CHP and Great American Lines were both opposed to the use of working load limits.

The CHP stated:

[Static breaking strength (SBS)] is a readily determined physical parameter. Conversely, the WLL, according to the NPRM is generally between ¼ and ⅓ of the static breaking strength of the tiedown. The CHP is not aware of any regulation which defines WLL. Instead, each manufacturer makes this determination for its own products. In many cases this may be based on industry standard practice, but since these practices are voluntary, no means is available to assure conformance.

In effect, the FHWA is abdicating its responsibility to determine proper tiedown standards by allowing manufacturers to determine the WLL of their devices. It is the opinion of the CHP that this parameter is far too critical to leave to a manufacturer's discretion.

Unless the WLL for each type of binder is defined in the regulation, there will always be some ambiguity as to the strength of the device.

Further, from an enforcement perspective, the WLL method could result in a hardship since WLL, based only on a factor determined by each manufacturer, is a much harder concept for enforcement/prosecution personnel to explain in court as opposed to the SBS, a parameter which is nearly intuitively obvious. Variations from manufacturer to manufacturer will further complicate the issue.

Great American Lines, Inc., stated:

[T]he current regulations as written in [§] 393.102 [of the] FMCS[Rs] are more than sufficient. Properly trained drivers using the securement as specified in the current regulations will have no problem keeping the cargo on the trailer. Education is the key, not change. The changes as proposed can only confuse the drivers, carriers and enforcement officers and cause an extremely dangerous situation * * *.

Changing to the C.V.S.A. guidelines can serve no good purpose and will confuse the people that it is meant to regulate. In the end the public will suffer. Don't change something that is working when properly applied.

In its second docket submission, Great American Lines, Inc., stated that "Neither the reasons presented in the text of the proposal nor at the congressional hearings preceding this notice of proposed rulemaking establish a problem with the regulation that warrant the changes being proposed."

The TTMA's position on the issue was contingent upon the FHWA's clarification of the term "tiedown assemblies." The TTMA stated: "If the term 'tiedown assemblies,' as used in [§] 393.102(b) includes trailer anchor points, then we object to changing 'breaking strength' to 'working load limit.'"

It is true, as the CHP noted, that working load limits are based on each manufacturer's determination. That is also true for static breaking strength, however, and neither value can be tested during roadside enforcement. The FHWA notes that the terms "static breaking strength" and "working load limit" are defined in numerous technical dictionaries, manuals, and reference books. While each manufacturer makes a determination of the working load limits of its own products, the documents incorporated by reference, combined with certain other requirements in § 393.102, eliminate the risk of voluntary or purely subjective standards. By incorporating by reference certain manufacturing standards, this rulemaking establishes specific minimum strength requirements for five categories of securement devices: steel strapping, chains, wire rope, cordage, and synthetic webbing.

The FHWA does not believe that tiedown manufacturers will produce devices which fail to meet these minimum strength requirements. For those cases in which the manufacturing standards do not provide specific working load limits (e.g., the document lists breaking strength or a working load limit range), the final rule establishes the procedure for determining this information.

In addition, the final rule includes a table of working load limits for some of the most commonly used types and sizes of tiedowns. The rule requires that the working load limits listed in the table be used when the tiedown material is not marked with its working load limit. The values listed in the table are based on the industry standards referenced in § 393.102. Therefore, the uncertainty about the strength of a tiedown is limited to tiedowns which do not meet the manufacturing

standards, and the rule prohibits the use of such tiedowns.

As for the CHP's comments about possible difficulties in the enforcement of a working load limit requirement, it is clear that the CVSA, whose membership includes State officials charged with enforcement, considered this issue before petitioning the FHWA. Section 393.102 specifies the relationship between the strength rating of the tiedown devices and the weight of the article being secured. If the strength rating and weight of the article are known, and the relationship between the two is clearly stated in § 393.102, the inspecting official should not have to provide an engineering discussion or justification of the strength rating requirement. Furthermore, as the CVSA indicated in its petition, and as several tiedown manufacturers, manufacturers' associations, and enforcement agencies have stated in their comments in response to the NPRM, a working load limit requirement would be easier to understand, use, and enforce because tiedown manufacturers prefer to label their products with the working load limit as opposed to the static breaking strength. The manufacturers believe the use of working load limits would decrease the likelihood of accidental misuse or overloading of the tiedowns.

The FHWA agrees with Great American Lines' emphasis on training and education. However, the number of accidents involving inadequately secured cargo suggests that some motor carriers do not understand or observe the current regulations. It must be noted that static breaking strength has been in use for approximately 20 years. During this time, education and training have played a role in reducing the number of cargo securement-related accidents to a relatively low level. The final rule is intended to make the cargo securement regulations easier to understand, use, and enforce in order to further reduce the incidence of cargo securement-related accidents.

The TTMA asked whether the term "tiedown assemblies" in the current regulations includes trailer anchor points. The answer is technically no, but the anchor points have to meet the same standard. Section 393.102(d) requires that the hook, bolt, weld, or other connections by which a tiedown assembly is attached to a vehicle, and the mounting place and means of mounting the connector, be at least as strong as the tiedown assembly. The final rule does not reference any manufacturing standards or recommended practices for trailer anchor points nor does it require trailer manufacturers to change their current practices regarding anchor points. However, the FHWA encourages trailer manufacturers to provide information to motor carriers and enforcement officials about the strength of anchor points to improve their knowledge of the cargo restraint capabilities of anchor points.

Incorporation by Reference and the Table of Working Load Limits

Generally, the commenters supported the inclusion of the table of working load limits in § 393.102 and the incorporation by reference of certain industry standards. Several commenters, however, recommended additions and/or corrections to the table.

Commenting in opposition to the incorporation by reference of industry standards, New York stated that "[a]doption by reference will cause confusion and make conformance by the industry difficult and also require the industry and enforcement personnel to use numerous documents in determining appropriate securement methodologies. The regulations should be self-contained and clear in their wording."

Some commenters questioned the need for including requirements for steel strapping. Maine, for example, stated: "While strapping may be used to secure materials to pallets, it is seldom used to hold freight to a vehicle. Since the material is not reused, it has little direct vehicle application." However, Connecticut argued that "[e]nforcement of Section 393.102 would be greatly enhanced if most common dimensions and strengths of steel strapping were added to the tables of working load limits." The CVSA stated:

The steel strap manufacturers have recently formed an association which is presently developing recommendations on their products. Steel strapping is typically not used as the primary load securement device. Normally the strapping will hold the cargo in bundles or to pallets while other devices are used to secure those bundles and pallets to the transporting vehicle. Because steel strapping is not often used as a direct tiedown device and since the strap manufacturers are now working through their association to develop strength and use guidelines, we recommend that this material not be included in the proposed rule at this time. The new industry standards may well supersede the federal specification referenced in the docket. Delaying action at this time could well reduce future confusion over regulatory requirements for steel strapping.

As for the incorporation by reference of rope standards, the Cordage Institute stated that "[s]isal and nylon ropes are not recommended [for cargo securement applications] and references to their standards [Sisal Rope Specifications (SRS–1), Nylon Rope Specifications (NRS–1), and Double Braided Nylon Rope Specifications (C1)] should be deleted." The Cordage Institute did not provide any information to support this recommendation and no other commenters addressed this subject. It was recommended that the new standards for polypropylene fiber rope (PPRS–2, revised August 1992) and polyester fiber rope (PETRS–2, revised January 1993) be used in place of P/PRS–1, May 1979 and PRS–1, May 1979, respectively. The Cordage Institute also provided clarification of its recommendations on calculating working load limit values. Its policy on working load limit values has changed from using a specific design factor for each size of cordage/rope to a design factor range. This approach leaves the selection of a specific value to the particular applications for which the cordage will be used. For cargo securement applications involving polypropylene and polyester fiber ropes, the Cordage Institute recommended a design factor of 6—the working load limit would be equal to ⅙ of the minimum breaking strengths listed in PPRS–2 and PETRS–2. The Cordage Institute recommended that the working load limits for manila rope be ½ that of the polypropylene fiber rope of the same diameter. Working load limit values were also recommended for "California Truck Rope"—rope meeting the requirements of Title 13 of the California Code of Regulations, § 1303(e). The Cordage Institute also suggested that the FHWA include California's § 1303(e) requirements for synthetic fiber rope (e.g., rope shall be treated for ultraviolet resistance, rope must have an orange surface marker in each rope strand, prohibition on the use of solid orange rope, etc.).

In response to those commenters opposed to the incorporation by reference of certain manufacturing standards, the FHWA notes that the intent of this process is to reduce the volume of material published in the **Federal Register** and Code of Federal Regulations by referencing relevant material published by the private sector. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law. Motor carriers do not

need to obtain copies of all of the materials which are incorporated by reference but only those that are relevant to their specific circumstances (e.g., carriers relying solely upon steel chains do not need to obtain copies of standards for steel strapping, cordage, webbing, or wire rope). Although there may be advantages to printing certain texts from private sector documents in the regulations, the FHWA does not intend § 393.102 to be a technical reference on manufacturing standards. Both the volume and complexity of the information covered in the referenced documents is too great to be effectively presented in the FMCSRs.

As for the specific documents to be incorporated by reference, the final rule differs from the NPRM in that it does not refer to Federal Specification No. A–A–880, Strapping, Steel Flat and Seals (May 13, 1980). Instead, the final rule incorporates American Society for Testing and Materials (ASTM) D3953–91, Standard Specification for Strapping, Flat Steel and Seals. As the CVSA noted in its comments, steel strap manufacturers, working in conjunction with the ASTM, are currently developing recommendations or guidelines concerning the use of steel strapping in load securement. The FHWA has reviewed the preliminary strength and use guidelines that ASTM Subcommittee D10.14 provided to the CVSA concerning breaking strengths and working load limits for steel strapping or banding. A copy of the preliminary strength and use guidelines is included in the docket file. The working load limits are ¼ of the breaking strengths (the breaking strength multiplied by a design factor of ⅓ and a "joint efficiency" of 0.75) listed in ASTM D3953–91.

After a review of ASTM D3953–91, the FHWA has determined that the preliminary strength and use guidelines of ASTM Subcommittee D10.14 have merit and could, to some extent, be addressed in the final rule through the incorporation by reference of ASTM D3953–91. The FHWA has compared the requirements of Federal Specification No. A–A–880 with those of ASTM D3953–91 and determined that the ASTM standard specification would serve as a better reference for manufacturers and carriers to use in determining if certain sizes or grades of steel strapping are adequate for cargo securement applications. Although the ASTM subcommittee (D10.14) is developing new guidelines, most of its preliminary recommendations are based on ASTM D3953–91. Therefore, the FHWA believes that it is appropriate to incorporate by reference the ASTM standard specification at this time, and consider the ASTM strength and use guidelines for incorporation after they have been published.

As for cordage specifications, the FHWA is incorporating by reference (1) CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979, (2) PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, revised August 1992, (3) PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, revised January 1993, (4) NRS–1, Nylon Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979, and (5) C1, Double Braided Nylon Rope Specifications, DBN-January 1984. The incorporation of CRS–1, NRS–1 and C1 is consistent with the NPRM and the inclusion of PPRS–2 and PETRS–2 is in response to the docket comments. The FHWA has reviewed the Cordage Institute's recommendation concerning the working load limits for manila rope (three-strand laid construction), and notes that the recommendation results in (1) an increase in the working load limit for rope with diameters of 3/16 through ½ inch and 2½ through 4 inches, and (2) a decrease in the working load limits for diameters of 9/16 through 2¼ inches. The increases in working load limits are generally between 1 and 5 percent for the 2½ through 4 inch diameter ropes. The percentage increases in the working load limits of 3/16 through ½-inch rope are much larger. However, the safety factors provided in MRS–1 for 3/16 through ½-inch rope were greater than those of the larger diameter ropes. The FHWA believes the working load limit recommendations of the Cordage Institute provide reasonable safety factors for manila rope. Accordingly, the FHWA is adopting these recommendations as part of the table of working load limits in the final rule. In light of the Cordage Institute's recommendations concerning manila rope working load limits, the FHWA does not believe that it is appropriate to incorporate by reference MRS–1. To do so would result in a contradiction between the working load limits contained in MRS–1 and the working load limits (for cargo securement applications) recommended by the Cordage Institute.

The FHWA accepts the Cordage Institute's suggestion to delete the reference to sisal rope (SRS–1), but does not believe that excluding nylon rope specifications from the final rule is appropriate. The final rule is not intended to incorporate standards for all tiedown materials, but only the most commonly used. In that context, and in consideration of the relatively low working load limits for sisal rope the FHWA does not believe that including a specification for sisal rope is essential. The FHWA notes that the rule does not prohibit the use of sisal rope.

As for the nylon rope specifications, the references remain as originally proposed. Although the agency cannot quantify the extent to which nylon rope is used, the working load limits for nylon rope are such that its usage in cargo securement applications is likely.

The FHWA is not adopting the Cordage Institute's recommendation to include rope requirements similar to those used in the California Code of Regulations. With the exception of California's requirement for ultraviolet resistance, the FHWA considers this particular regulatory language unnecessarily design restrictive in that it would prohibit, without sufficient technical justification, certain synthetic rope and webbing based primarily on material and/or color, irrespective of its strength or safety for use in cargo securement. As for ultraviolet resistance requirements, the Cordage Institute did not provide, and the California regulations do not include, sufficient information to enable the FHWA to establish specific and objective regulatory language.

The NPRM requested comments on the method used in determining the working load limit for wire rope which is not marked. Four commenters responded to this request. All supported the method described in the NPRM (i.e., ¼ of the nominal strength—the nominal strength multiplied by a design factor of ⅓ and the "termination efficiency," 0.75). Therefore, § 393.102(b) includes this method for determining the working load limit of unmarked wire rope.

Marking and Labeling of Tiedown Devices

Several commenters responded to the FHWA's questions concerning the need for requiring the use of only those tiedown devices which are marked or labeled with the working load limit. For example, the CVSA stated:

Manufacturers of tiedowns have indicated that they are willing to mark load securement devices with working load limit ratings. We believe having working load values marked on load securement devices is a significant aid to their proper use and we would like to see such markings universally required.

We recognize that presently, much of the tiedown equipment in the field is

either unmarked or not directly marked with working load limit. As it would be an extreme waste of resources and a huge financial burden on carriers to scrap today's inventory of products not marked with working load limit, we would recommend the requirement for marking working load limits be made effective at some future date, i.e., three to five years. Another way to handle this would be to grandfather the tiedown equipment already manufactured and being used by the motor carrier industry.

New York believed the final rule should "clearly state that unmarked cargo securement devices, steel strapping, chain, webbing, wire rope, etc. will not be allowed and will cause vehicles transporting materials with unmarked devices to be placed out-of-service. There is no way to effectively ensure the adequacy of unmarked devices."

The OOIDA stated:

Owner-operators frequently purchase tie-down hooks, chains, wire ropes, etc. at truck stops or other similar locations. Drivers need to be assured that the items purchased meet all applicable safety standards. Therefore, the Agency should take steps to require prominent displays on packaging that will ensure that the product meets safety requirements. Specific details on packaging as to working load limit are preferable to general statements that manufacturing standards are met.

While the FHWA is aware of the need for carriers and enforcement officials to be able to identify the various cargo securement devices and the associated working load limits, the final rule does not include a requirement for marking and labeling of these devices. Such a requirement must take into account manufacturers' practices as well as the need for uniformity. The commenters did not provide any listings of current marking and labeling practices to assist the FHWA in determining appropriate regulatory language. The agency cannot estimate what percentage of tiedown equipment currently in use by motor carriers or stocked by manufacturers and retailers is unmarked or not directly marked with a working load limit. Although a general requirement for the use of marked and labeled equipment could be included in § 393.102, the absence of specific and objective guidelines as to what constitutes an acceptable mark or label for each type of tiedown (i.e., chain, synthetic webbing, wire rope, steel strapping, cordage) would create enforcement difficulties. The FHWA encourages tiedown manufacturers to develop uniform systems of marking and labeling their products to assist motor carriers and enforcement officials in determining working load limits.

Applicability of Cargo Securement Regulations to Shippers

New York and the OOIDA expressed concern about the applicability of the cargo securement regulations to shippers. Citing the catastrophic results of accidents caused by inadequate securement of steel and aluminum products, New York believed the "federal regulations should assign responsibility for proper cargo securement of steel and aluminum products to both the shipper and the carrier." The OOIDA stated:

A large degree of responsibility for cargo securement lies squarely with the individual shipper. It is the shipper who selects and ultimately contracts with various motor carriers to transport their commodities. Each shipper has an obligation to scrutinize every prospective carrier and engage only those capable of providing the proper equipment and expertise necessary to safely haul their specific product.

The FHWA acknowledges these concerns. Whatever the merits of these arguments, however, the FHWA has no statutory authority to regulate shippers of steel and aluminum products.

Future Rulemakings on Cargo Securement

Several commenters discussed the need for amending or clarifying numerous provisions of the cargo securement regulations as well as the need for research. The Illinois Department of Transportation wrote:

Illinois is concerned that application of the proposed aggregate working load limit formula may not provide adequate margins of safety. What may be considered adequate securement for general freight may not be adequate for other loads. The regulations identify unique securement standards for intermodal containers. Coils and metal articles also have special securement requirements. Cargo weight and load configuration both need to be factored into the performance standards expected from tiedown systems * * *.

The potential gravity and actual severity of incidents involving the transportation of metal coils, their frequency of occurrence and the high number of apparent violations of the securement regulations give credibility to the need to reevaluate the securement regulations. These concerns have led Illinois to sponsor a university research project to examine the unique properties of metal coil cargo securement * * *.

The project will take 15 months and focus upon five areas: (1) Review and evaluate current systems, (2) examine the volume of coils transported and the types of securement systems in use in Illinois, (3) evaluate the knowledge of persons using or enforcing the securement regulations, (4) perform engineering dynamic studies to evaluate securement systems, and (5) recommend improvements in securement systems and/or educational efforts for persons involved in both the transportation and enforcement areas of the regulations. Upon its completion, the results and conclusion of this project will be made available to FHWA and other parties interested in transportation safety.

The research project will examine the dynamic forces affecting securement systems during normal driving and during less than ideal transportation conditions such as hard braking, emergency maneuvers or sharp radius turns. Illinois' data indicates loss of cargo commonly occurs during these less than ideal conditions.

The FHWA welcomes efforts by academia, tiedown and vehicle manufacturers, motor carriers, and others conducting research or studies directed at reducing the incidence of cargo securement-related accidents. Currently the FHWA is working with the Canadian Council of Motor Transport Administrators, State and Provincial agencies responsible for motor carrier safety activities, and U.S. and Canadian industry groups to conduct a comprehensive research program on cargo securement. A report identifying certain cargo securement issues needing research and describing a program to address them was published by the Ontario Ministry of Transportation in November 1993. A copy of the report entitled "A Proposal for Research to Provide a Technical Basis for a Revised National Standard on Load Security for Heavy Trucks" is included in the docket file. It is expected that this research, along with efforts such as those described by Illinois, will contribute greatly toward evaluating current cargo securement regulations and industry practices and providing recommendations for specific actions needed to improve safety.

This final rule is not intended to preclude consideration of future rulemakings on cargo securement.

Discussion of Final Rule

The FHWA is amending § 393.102(b) to require that the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction be at least ½ the weight of the article secured. Steel

strapping, chain, synthetic webbing, wire rope, and cordage used must meet certain manufacturing or performance standards which are incorporated by reference. The incorporation of these standards is intended to specify minimum requirements for tiedowns and not to restrict the use of tiedowns which exceed the criteria contained therein.

Section 393.7, which was proposed in its entirety in the NPRM, was created by the final rule entitled "Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles" (RIN 2125–AD17; FHWA Docket No. MC–93–19), which is published elsewhere in today's **Federal Register**. The FHWA is amending § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51 and to provide information on the availability of the incorporated documents. After a review of the responses to the September 17, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted the documents listed in § 393.102(b)(1) to (b)(5) to the Director of the Federal Register for approval in accordance with 5 U.S.C. 552(a) and 1 CFR 51.

The final rule does not require tiedowns to be marked or labeled. However, manufacturers of tiedowns and associated equipment are encouraged to provide motor carriers and enforcement officials with a means to easily determine the working load limits of their products. For those cases in which the tiedown manufacturing standards (incorporated by reference into the final rule) include guidelines for marking and labeling, adherence to those guidelines is encouraged, but is not mandated.

Section 393.102(b) is amended to include a table of working load limits for common types and sizes of tiedown devices. The working load limits listed in the table are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials marked by the manufacturer with working load limits which differ from the table, shall be considered to have a working load limit equal to the value for which they are marked.

With regard to the working load limits for cordage, the table lists values for manila, polypropylene, polyester, and nylon cordage. For those cases in which the a synthetic rope does not have a manufacturers' marking or label to enable motor carriers and enforcement officials to distinguish between polypropylene, polyester fiber ropes, polyester/polypropylene composite rope, or nylon rope, the working load limits of polypropylene fiber rope shall be used. Since polypropylene fiber rope generally has a lower working load limit than polyester and nylon ropes, this provision is important to ensure safety. The agency notes that the working load limits for nylon rope are based on the specific design factors in the nylon rope specifications, NRS–1 and C1. These design factors are between 9 and 12 for three- and eight-strand standard construction nylon rope and between 7 and 11 for double braided nylon rope. As a result, the working load limits shown in § 393.102 for certain sizes of nylon rope are lower than that for polypropylene fiber rope. Considering the Cordage Institute's recommendation for a design factor of 6 for polypropylene fiber rope and polyester rope, the FHWA believes that the use of polypropylene fiber rope working load limits is appropriate in those cases in which the rope cannot be identified as nylon. The table of working load limits does not include information on polyester/polypropylene composite rope because the working load limit values are generally very close, if not identical, to those of polypropylene fiber rope.

In the case of steel strapping, wire rope, and cordage, the final rule includes a procedure for calculating the working load limits. The published industry standards for these materials use breaking strengths, nominal strengths, and working load limit ranges respectively. To ensure consistency in calculating the working load limits and an appropriate safety margin in determining the number of tiedown devices required, these procedures must be used when the working load limit is not provided by the manufacturer or when the manufacturer provides working load limit ranges for cargo securement applications.

Ruelmaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule amends the requirements for the strength ratings for cargo securement devices. The FHWA has determined that this is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. The final rule requires that the aggregate working load limits of the tiedown assemblies used to secure cargo be at least 1/2 times the weight of the article being secured. The total number of tiedown assemblies required by the rule would generally be the same as or slightly more than the number required using the previous breaking strength terminology. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. As previously stated, the final rule amends § 393.102(b) of the Federal Motor Carrier Safety Regulations by requiring that the aggregate working load limits of the tiedown assemblies used to secure cargo be at least 1/2 times the weight of the article being secured. The total number of tiedown assemblies required by the rule would generally be the same as or slightly more than the number required prior to this amendment. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects in 49 CFR Part 393

Highway safety, Incorporation by reference, Motor carriers, Motor vehicle safety.

Issued on: June 23, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending part 393 of title 49, Code of Federal Regulations, as set forth below.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION [AMENDED]

1. The authority citation for 49 CFR part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. Section 393.7 is amended by adding paragraph (b)(2) through (b)(6) to read as follows:

§ 393.7 Matter incorporated by reference.

* * * * *

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) * * *

(2) Specifications of the American Society for Testing and Materials. Information and copies may be obtained by writing to: American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained by writing to: National Association of Chain Manufacturers, P.O. Box 3143, York, Pennsylvania 17402–0143.

(4) Specifications of the Web Sling and Tiedown Association. Information and copies may be obtained by writing to: Web Sling and Tiedown Association, Inc., 710 East Ogden Avenue, Suite 113, Naperville, Illinois 60563.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 350 Lincoln Street, t 115, Hingham, Massachusetts 02043.

(7)–(9) [Reserved].

* * * * *

3. Section 393.102 is amended by removing paragraph (g) and by revising paragraph (b) to read as follows:

§ 393.102 Securement systems.

* * * * *

(b) *Tiedown assemblies.* Except for integral securement devices of containers designed for the transportation of containerized, intermodal cargo which conform to the rules in § 393.100(e), the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least 1/2 times the weight of the article. With the exception of marking identification, tiedowns used must meet applicable manufacturing standards listed in this paragraph (b).

(1) *Steel strapping.* Steel strapping used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the American Society for Testing and Materials' Standard Specification for Strapping, Flat Steel and Seals, ASTM D3953–91. Steel strapping which is not marked by the manufacturer with a working load limit, shall be considered to have a working load limit equal to 1/4 of the breaking strength listed in ASTM D3953–91. (See § 393.7(b) for information on the incorporation by reference and availability of this document.) Steel strapping that is one inch wide or wider must have at least two pairs of crimps in each seal and when an end-over-end lap joint is formed, it must be sealed with at least two seals.

(2) *Chain.* Chain used as a component of a tiedown assembly must conform to the requirements of the June 15, 1990, edition of the National Association of Chain Manufacturers' Welded Steel Chain Specifications applicable to all types of chain. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(3) *Webbing.* Webbing used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Webbing Tiedowns. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(4) *Wire rope.* Wire rope used as a component of a tiedown assembly must conform to the requirements of the November 1985 second edition of the Wire Rope Technical Board's Wire Rope Users Manual. Wire rope which is not marked by the manufacturer with a working load limit, shall be considered to have a working load limit equal to ¼ of the nominal strength listed in the Wire Rope Users Manual. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(5) *Cordage.* Cordage used as a component of a tiedown assembly, must conform to the applicable Cordage Institute rope standards listed below: PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January, 1993; PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August, 1992; CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; NRS–1, Nylon Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; C1, Double Braided Nylon Rope Specifications, DBN-January 1984. (See § 393.7(b) for information on the incorporation by reference and availability of these documents.)

(6) *Tables of working load limits.* The working load limits listed in the tables in this paragraph are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits which differ from the table, shall be considered to have a working load limit equal to the value for which they are marked. Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

TABLES TO § 393.102(b)(6)—WORKING LOAD LIMITS (WLL)

[Chain WLL in pounds (kg)]

Size inch (mm)	Grade 3 proof coil	Grade 4 high test	Grade 7 transport	Grade 8 alloy
1/4 (7)	1300 (590)	2600 (1180)	3150 (1430)	3500 (1590)
5/16 (8)	1900 (860)	3900 (1770)	4700 (2130)	5100 (2310)
3/8 (10)	2650 (1200)	5400 (2450)	6600 (2990)	7100 (3220)
7/16 (11)	3500 (1590)	5800 (2630)	8750 (3970)	.....
1/2 (13)	4500 (2040)	9200 (4170)	11300 (5130)	12000 (5440)
5/8 (16)	6900 (3130)	11500 (5220)	15800 (7170)	18100 (8210)
Chain Mark	PC	HT	.....	T
Examples	3	4	7	8
	30	40	70	80

Synthetic Webbing WLL

Width inch (mm)	WLL pounds (kg)
1-3/4 (45)	1750 (790)
2 (50)	2000 (910)
3 (75)	3000 (1360)
4 (100)	4000 (1810)

Wire Rope (6 X 37, Fiber Core) WLL

Diameter inch (mm)	WLL pounds (kg)
1/4 (7)	1400 (640)
5/16 (8)	2100 (950)
3/8 (10)	3000 (1360)
7/16 (11)	4100 (1860)
1/2 (13)	5300 (2400)
5/8 (16)	8300 (3770)
3/4 (20)	10900 (4940)
7/8 (22)	16100 (7300)
1 (25)	20900 (9480)

Manila Rope WLL

3/8 (10)	205 (90)
7/16 (11)	265 (120)
1/2 (13)	315 (150)
5/8 (16)	465 (210)
3/4 (20)	640 (290)
1 (25)	1050 (480)

Polypropylene Fiber Rope WLL (3-Strand and 8-Strand Constructions)

3/8 (10)	400 (180)
7/16 (11)	525 (240)
1/2 (13)	625 (280)
5/8 (16)	925 (420)
3/4 (20)	1275 (580)
1 (25)	2100 (950)

Polyester Fiber Rope WLL (3-Strand and 8-Strand Constructions)

3/8 (10)	555 (250)
7/16 (11)	750 (340)
1/2 (13)	960 (440)
5/8 (16)	1500 (680)
3/4 (20)	1880 (850)
1 (25)	3300 (1500)

Wire Rope (6 X 37, Fiber Core) WLL—Continued

Diameter inch (mm)	WLL pounds (kg)
Nylon Rope WLL	
3/8 (10)	278 (130)
7/16 (11)	410 (190)
1/2 (13)	525 (240)
5/8 (16)	935 (420)
3/4 (20)	1420 (640)
1 (25)	2520 (1140)
Double Braided Nylon Rope WLL	
3/8 (10)	336 (150)
7/16 (11)	502 (230)
1/2 (13)	655 (300)
5/8 (16)	1130 (510)
3/4 (20)	1840 (830)
1 (25)	3250 (1470)

Steel Strapping WLL

Width – thickness inch	WLL pounds (kg)
1-1/4 x 0.029	1190 (540)
1-1/4 x 0.031	1190 (540)
1-1/4 x 0.035	1190 (540)
1-1/4 x 0.044	1690 (770)
1-1/4 x 0.050	1690 (770)
1-1/4 x 0.057	1925 (870)
2 x 0.044	2650 (1200)
2 x 0.050	2650 (1200)

* * * * *

[FR Doc. 94–16069 Filed 7–5–94; 8:45 am]

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federal register

Wednesday
July 6, 1994

Part III

Department of Education

34 CFR Parts 74 and 77
Administration of Grants and Agreements With Institutions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 77

RIN 1880–AA34

Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Definitions That Apply to Department Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary revises Part 74 (Administration of Grants) and amends part 77 (Definitions that Apply to Department Regulations) of the Education Department General Administrative Regulations (EDGAR). These final regulations implement Office of Management and Budget (OMB) Circular A–110 establishing uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

EFFECTIVE DATE: These regulations will be effective October 1, 1994, and will apply to new and continuation awards made on or after October 1, 1994, with the exception of §§ 74.12, 74.21, 74.25, 74.34, 74.44, 74.45, 74.46, 74.47, 74.51, 74.52, 74.53, 74.71, 74.72, and 74.75. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date of these sections will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Greg Vick, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3636, Regional Office Building 3, Washington, DC 20202. Telephone: (202) 708–8199. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 27, 1992, OMB published a proposed version of OMB Circular A–110 (57 FR 39018). OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations, and others. After considering all comments, OMB published the circular in final form on November 29, 1993 (58 FR 62992).

The Secretary revises Parts 74 (Administration of Grants) and 77 (Definitions that Apply to Department Regulations) of EDGAR to incorporate the revised Circular. The Secretary has deviated from the text of the Circular to make certain technical changes. In addition, the Secretary has made two substantive changes to the text of the Circular.

Section 412 of the Department of Education Organization Act (DEOA)(20 U.S.C. 3472) provides that the Secretary may delegate the functions of the Department only to officers and employees of the Department. Section _____ .4 of the Circular, however, has the effect of delegating one of the Secretary's functions—granting exceptions to the regulations as promulgated by the Secretary for Department programs—to employees of the Office of Management and Budget (OMB). In order to avoid this conflict with the DEOA, the Secretary is deviating from the text of the Circular to authorize the Secretary to grant exceptions to the regulations after consultation with appropriate officials of OMB.

Section 437(a) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232f) requires that records be retained by recipients of grants for a period of five years. The record retention period specified in sec. _____.53(b) of the Circular, as established by OMB, however, requires recipients to retain financial records, supporting documents, statistical records, and all other records pertinent to the award for a period of three years. The Secretary has changed this requirement in § 74.53(b) of the regulations to require recipients to retain records for five years in accordance with GEPA.

Summary of Major Provisions

The revised Circular A–110 as implemented in 34 CFR Parts 74 and 77 of the Education Department General Administrative Regulations (EDGAR) (1) harmonize the regulations with numerous and significant changes in grant administrative practice and legislation since the original Circular was issued in 1976; (2) bring the requirements for institutions of higher education, hospitals, and other non-profit organizations closer to those contained for State, local, and tribal governments in OMB Circular A–102 (implemented by the Department at 34 CFR Part 80) so that the Department's grant administration is more uniform across classes of recipients; (3) reduce regulatory burden on and give greater flexibility to recipients in numerous cases; and (4) strengthen certain provisions in order to protect the Federal interest. The Circular, as implemented in these regulations—

Definitions: Expands or clarifies many of the definitions in the old A–110 Circular (e.g., suspension); Adds new definitions to 34 CFR Parts 74 and 77 of EDGAR; and amends Part 77 of to reflect the definitions contained in Part 80.

Program income: Allows costs incident to the generation of program income to be deducted from gross income to determine program income; requires excess program income to be deducted from total project costs; exempts program income earned after the project period; and clarifies that all program income should be used by recipients before they request additional cash payments.

Specifies in § 74.27 that certain OMB circulars and **Federal Register** notices apply to grants and subgrants subject to Part 74. The Secretary adopts the following Circulars and their cost principles as published in the **Federal Register** on the dates shown:

- A–21—Cost Principles for Educational Institutions—(March 6, 1979 [44 FR 12368]; and August 3, 1982 [47 FR 33658]; and June 9, 1986 [51 FR 20908]; and December 2, 1986 [51 FR 43487]; and October 3, 1991 [56 FR 50224]);
- A–87—Cost Principles for State and Local Governments—(January 28, 1981 [46 FR 9548]); and
- A–122—Cost Principles for Nonprofit Organizations—(July 8, 1990 [45 FR 46022]; and March 17, 1980 [46 FR 17185]; and April 27, 1984 [49 FR 18260]; and May 8, 1984 [49 FR 19588]).

These cost principles would apply except to the extent that program regulations or the regulations in EDGAR require a different outcome.

If OMB publishes at a future date revisions to any of these cost principles, the Secretary will publish regulatory amendments adopting the revised circulars.

Record retention: Clarifies the Department's right to have timely access to recipient personnel and records.

Cost sharing and matching: Allows the fair market value of real property to be used for cost sharing or matching (with the approval of the Department); allows a reasonable amount of fringe benefits to be used for valuing donated services; and adds a section addressing use of indirect costs as part of cost sharing or matching.

Reports: Provides certain conditions for waiving the requirement that recipients submit an SF–272 cash transaction report.

Sub-recipients: Describes recipient responsibilities for monitoring sub-recipients.

Administrative requirements: Revises administrative provisions to allow the Department to restrict fund transfers greater than 10% among direct cost categories for projects with a Federal share greater than $100,000; authorizes the Department to waive certain prior approval and other administrative and programmatic requirements; authorizes administrative and programmatic waivers automatically for research grants unless specifically prohibited; and authorizes the Department to grant exceptions on a case-by-case basis.

Closeout: Requires recipients to liquidate obligations 90 calendar days after the funding period or the date the project is completed.

Preaward provisions: Allows the Department to use application forms other than the SF–424; incorporates requirements of the Federal Grant and Cooperative Agreement Act concerning the use of grants, cooperative agreements, or contracts; and addresses the issues of priority setting and advance public notice.

Property management: Raises the acquisition cost threshold for defining equipment (formerly nonexpendable personal property) from $300 to $5,000; adds new provisions for intangible property that now establish title to intangible property and incorporate governmentwide patent regulations; requires recipients to avoid purchasing unnecessary or duplicative items of equipment by determining through an appropriate process that existing equipment is not available; requires recipients to provide insurance for equipment and real property acquired with Federal funds; and adds new provisions for federally owned property.

Property trust relationship: Authorizes the Secretary to require recipients to file liens or other appropriate notices to protect the federal interest in property acquired or improved with federal funds.

Supplies: Revises standards for supplies (formerly expendable personal property); raises the threshold to $5,000 for having to account for unused supplies at the end of a project; and prohibits recipients from using federally funded supplies to provide services for a fee lower than that charged by private companies for the same service.

Procurement standards: Promotes the use of small/minority-owned/women's business enterprises; requires recipients to establish certain standards of conduct for its employees engaged in awarding contracts; increases the small purchase threshold from $10,000 to $25,000; requires recipients to give preference in contracting to the purchase of recycled products pursuant to EPA guidelines; and requires that recipients add clauses to their contracts for Anti-Lobbying and Debarment and Suspension.

Special award conditions: Provides for written notice to the applicant or recipient about the reasons for imposing special award conditions, including an explanation of how recipients may request reconsideration of these conditions.

In-kind contributions: Redefines third party in-kind contributions to mean the value of non-cash contributions from third parties, and provides that all grantee contributions, whether in the form of property or cash, are considered contributions and are subject to applicable cost principles.

Metric Usage: Commits the Department to follow the provisions of E.O. 12770—Metric Usage in Federal Government Programs.

Audit Requirements: Adopts the audit requirements of OMB Circulars A–128 and A–133. OMB Circular A–128 applies to non-federal audits that States and local governments are required to obtain. OMB Circular A–133 applies to non-federal audits that institutions of higher education and other nonprofit organizations are required to obtain. The Secretary adopts these audit circulars as published in the **Federal Register** on the following dates:

- A–128—Audits of State and Local Governments—(May 6, 1985 [50 FR 19114]; and December 6, 1985 [50 FR 50027]; and December 23, 1985 [50 FR 52406]; and November 13, 1987 [52 FR 43712]); and
- A–133—Audits of Institutions of Higher Education and Other Nonprofit Organizations—(March 16, 1990 [55 FR 10019]).

In some cases, the regulatory language in these sections represent changes in policy or procedure in the administration of the affected grants. In others, the language—even if changed from the current 34 CFR Part 74—reaffirms the existing administrative policy or procedures of the Department.

If OMB publishes at a future date revisions to any of these audit requirements, the Secretary will publish regulatory amendments adopting the revised circulars.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Secretary waives rulemaking on these regulations under section 553(b)(B) of the Administrative Procedure Act (20 U.S.C. 553(b)(B)). This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes further public comment on the technical changes made to the Circular is unnecessary because the substance of these provisions has already been subjected to public comment during OMB's solicitation of public comment. The Secretary also believes that further public comment on the substantive changes to the Circular is unnecessary because these changes incorporate statutory requirements that the Secretary is not authorized to change.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Department's programs effectively and efficiently. Burdens, specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are institutions of higher education, hospitals, and other non-profit organizations. However, the regulations would not have a significant economic impact on these small institutions because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act

Sections 74.12, 74.21, 74.25, 74.34, 74.44, 74.45, 74.46, 74.47, 74.51, 74.52,

74.53, 74.71, 74.72, and 74.75 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect institutions of higher education, hospitals, and other non-profit organizations. Annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response for 7300 respondents, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency of authority of the United States.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs—education, Grant Administration, Hospitals, Institutions of higher education, Non-profit organizations, Reporting and recordkeeping requirements.

34 CFR Part 77

Definitions, Education Department, Grant programs—education.

Dated: May 27, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 74 and amending part 77 to read as follows:

1. Part 74 is revised to read as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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74.21 Standards for financial management systems.
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74.24 Program income.
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74.27 Allowable costs.
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74.31 Insurance coverage.
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74.33 Federally-owned and exempt property.
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74.50 Purpose of reports and records.
74.51 Monitoring and reporting program performance.
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Termination and Enforcement

74.60 Purpose of termination and enforcement.
74.61 Termination.
74.62 Enforcement.

Subpart D—After-The-Award Requirements

74.70 Purpose.
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74.72 Subsequent adjustments and continuing responsibilities.
74.73 Collection of amounts due.

Appendix A—Contract Provisions

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110, unless otherwise noted.

Subpart A—General

§ 74.1 Purpose.

(a) This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

(b) The Secretary does not impose additional or inconsistent requirements, except as provided in §§ 74.4 and 74.14 or unless specifically required by Federal statute or executive order.

(c) This part applies to all recipients other than State and local governments and Indian tribal organizations. Uniform requirements for State and local governments and tribal organizations are in 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(d) Non-profit organizations that implement Federal programs for the States are also subject to State requirements. (20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.2 Definitions.

The following definitions apply to this part:

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for—

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of—

(1) Earnings during a given period from—

(i) Services performed by the recipient; and

(ii) Goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment,

including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property, in lieu of money, by the Federal Government to an eligible recipient. The term does not include—

(1) Technical assistance, which provides services instead of money;

(2) Other assistance in the form of loans, loan guarantees, interest subsidies, or insurance;

(3) Direct payments of any kind to individuals; and

(4) Contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which the Secretary determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Department of Education (ED).

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

Disallowed costs means those charges to an award that the Secretary determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of ED that is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Secretary has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal awarding agency means the Federal agency that provides an award to the recipient.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by ED regulations or ED implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock, and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees, and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 74.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in ED regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as established in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from ED to carry out a project or program. The term includes public and private institutions of higher education,

public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Secretary. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term "research" also includes activities involving the training of individuals in research techniques where these activities utilize the same facilities as other pesearch and development activities and where these activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" as defined in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Secretary.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.

Suspension means an action by the Secretary that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Secretary. Suspension of an award is a separate action from suspension under 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Secretary that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with the requirements of this part are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 74.4.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.4 Deviations.

The Secretary, after consultation with the Office of Management and Budget (OMB), may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part are permitted only in unusual circumstances. The Secretary may apply more restrictive requirements to a class of recipients when approved by OMB. The Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Secretary.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if the subrecipients are institutions of higher education, hospitals, or other non-profit organizations. State and local government subrecipients are subject to the provisions of 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Subpart B—Pre-Award Requirements

§ 74.10 Purpose.

Sections 74.11 through 74.17 prescribes forms and instructions and other pre-award matters to be used in applying for awards.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.11 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, the Secretary decides on the appropriate award instrument (i.e., grant, cooperative agreement, or

contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements, and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, substantial involvement is expected between ED and the recipient when carrying out the activity contemplated in the agreement. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* The Secretary notifies the public of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.12 Forms for applying for Federal assistance.

(a) The Secretary complies with the applicable report clearance requirements of 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—with regard to all forms used by ED in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Secretary.

(c) For Federal programs covered by E.O. 12372—Intergovernmental Review of Federal Programs (implemented by the Secretary in 34 CFR Part 79—Intergovernmental Review of Department of Education Programs and Activities)—the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Secretary or the *Catalog of Federal Domestic Assistance* (available from the Superintendent of Documents, Government Printing Office). The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) If ED does not use the SF–424 form, the Secretary may indicate whether the application is subject to review by the State under E.O. 12372.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.13 Debarment and suspension.

The Secretary and recipients shall comply with the nonprocurement debarment and suspension common rule (implemented by the Secretary in 34 CFR Part 85). This common rule restricts subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.14 Special award conditions.

(a) The Secretary may impose special award conditions, if an applicant or recipient—

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) If special award conditions are established under paragraph (a) of this section, the Secretary notifies the applicant or recipient of—

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions are promptly removed once the conditions that prompted them have been corrected.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The Secretary follows the provisions of E.O. 12770—Metric Usage in Federal Government Programs.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the RCRA. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR Parts 247–254). Accordingly, recipients that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the Secretary allows recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with ED. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Subpart C—Post-Award Requirements

Financial and Program Management

§ 74.20 Purpose of financial and program management.

Sections 74.21 through 74.28 prescribe standards for financial management systems, methods for making payments and rules for—

(a) Satisfying cost sharing and matching requirements;

(b) Accounting for program income;

(c) Approving budget revisions;

(d) Making audits;

(e) Determining allowability of cost; and

(f) Establishing fund availability.

(20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circular A–110)

§ 74.21 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current, and complete disclosure of the financial results of each federally-sponsored project in accordance with the reporting requirements established in § 74.52. If the Secretary requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, income, and interest.

(3) Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR Part 205—Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.

(6) Written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Secretary may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Secretary may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required under paragraphs (a) and (b) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223—Surety Companies Doing Business with the United States.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR Part 205.

(b)(1) Recipients are paid in advance, provided they maintain or demonstrate the willingness to maintain—

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 74.21.

(2) Cash advances to a recipient organization are limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project.

(3) The timing and amount of cash advances are as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances are consolidated to cover anticipated cash needs for all awards made by the Secretary.

(1) Advance payment mechanisms include, but are not limited to, Treasury check, and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR Part 205.

(3) Recipients are authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270—Request for Advance or Reimbursement—or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by ED instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Secretary may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Secretary makes payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Secretary has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Secretary may provide cash on a working capital advance basis. Under this procedure, the Secretary advances cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Secretary reimburses the recipient for its actual cash disbursements. The working capital advance method of payment is not used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on these funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the Secretary does not withhold payments for proper charges made by recipients at any time during the project period unless—

(1) A recipient has failed to comply with the project objectives, the terms

and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129—Managing Federal Credit Programs. Under these conditions, the Secretary may, upon reasonable notice, inform the recipient that ED does not make payments for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) The standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, the Secretary does not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation, and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless—

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Secretary, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms are authorized for the recipients in requesting advances and reimbursements. The Secretary does not require more than an original and two copies of the following:

(1) SF–270—Request for Advance or Reimbursement. The Secretary adopts the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. The Secretary may, however, use this form for construction programs in lieu of the SF–271—Outlay Report and Request for Reimbursement for Construction Programs.

(2) SF–271—Outlay Report and Request for Reimbursement for Construction Programs. The Secretary adopts the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, the Secretary may substitute the SF–270 when the Secretary determines that it provides adequate information to meet Federal needs.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, are accepted as part of the recipient's cost sharing or matching when contributions meet the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Secretary.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Secretary.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the Secretary authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of—

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(2) The current fair market value. However, if there is sufficient justification, the Secretary may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings, and land for which title passes to the recipient may differ according to the purpose of the award.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made.

However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Secretary has approved the charges.

(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment may not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings, and land must be documented.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.24 Program income.

(a) The Secretary applies the standards contained in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with ED regulations or the terms and conditions of the award, must be used in one or more of the following ways:

(1) Added to funds committed to the project by the Secretary and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Secretary authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Secretary does not specify in program regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section applies automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section applies automatically unless the Secretary indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 74.14.

(e) Unless ED regulations or the terms and conditions of the award provide otherwise, recipients have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by ED or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 74.30 through 74.37).

(h) Unless ED regulations or the terms and condition of the award provide otherwise, recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon ED requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from ED for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Secretary.

(6) The inclusion, unless waived by the Secretary, of costs that require prior approval in accordance with OMB Circular A–21—Cost Principles for Institutions of Higher Education, OMB Circular A–122—Cost Principles for Non-Profit Organizations, or 45 CFR Part 74 Appendix E—Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals, or 48 CFR Part 31—Contract Cost Principles and Procedures, as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment, or general support services.

(d) No other prior approval requirements for specific items are imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Secretary may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. These waivers may authorize recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Secretary. All pre-award costs are incurred at the recipient's risk (i.e., the Secretary is under no obligation to reimburse these costs if for any reason the recipient does not receive an award

or if the award is less than anticipated and inadequate to cover these costs).

(2)(i) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply:

(A) The terms and conditions of award prohibit the extension.

(B) The extension requires additional Federal funds.

(C) The extension involves any change in the approved objectives or scope of the project.

(ii) For one-time extensions, the recipient shall notify the Secretary in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Secretary provides otherwise in the award or in ED's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain prior approvals) unless one of the conditions included in paragraph (e)(2)(i) of this section applies.

(f) The Secretary may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Secretary. The Secretary does not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the Secretary for budget revisions whenever—

(1) The revision results from changes in the scope or the objective of the project or program;

(2) The need arises for additional Federal funds to complete the project; or

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 74.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When the Secretary makes an award that provides support for both construction and nonconstruction work, the Secretary may require the recipient to request prior approval from the Secretary before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, recipients shall notify the Secretary in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Secretary indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Secretary shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Secretary informs the recipient in writing of the date when the recipient may expect the decision.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations are subject to the audit requirements contained in OMB Circular A–133—Audits of Institutions of Higher Education and Other Non-Profit Institutions.

(b) State and local governments are subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and the ED regulations implementing OMB Circular A–128—Audits of State and Local Governments.

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 are subject to the audit requirements established by the Secretary.

(d) Commercial organizations are subject to the audit requirements established by the Secretary or the prime recipient as incorporated into the award document.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.27 Allowable costs.

(a) For each kind of recipient, there is a set of cost principles for determining allowable costs. Allowability of costs are determined in accordance with the cost principles applicable to the entity incurring the costs, as specified in the following chart.

(Note: OMB circulars are available from the Office of Management and Budget, Publication Office, Room 2200, New Executive Office Building, Washington, DC 20503 (202) 395–7332.)

For the cost of a—	Use the principles in—
Private nonprofit organization other than (1) An institution of higher education; (2) a hospital; or (3) an organization named in OMB Circular A–122 as not subject to that circular..	OMB Circular A–122.
Educational institution	OMB Circular A–21.
Hospital	Appendix E to 45 CFR Part 74.
Commercial for-profit organization other than a hospital and an educational institution.	48 CFR Part 31 Contract Cost Principles and Procedures or uniform cost accounting standards that comply with cost principles acceptable to ED.

(b) The cost principles applicable to a State, a local government, or Federally recognized Indian tribal government are specified at 34 CFR § 80.22.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Secretary.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Property Standards

§ 74.30 Purpose of property standards.

Sections 74.31 through 74.37 establish uniform standards governing

management and disposition of property furnished by ED whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards. The Secretary does not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 74.31 through 74.37.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.32 Real property.

The Secretary prescribes requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, the minimum requirements provide the following:

(a) Title to real property must vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Secretary.

(b) The recipient shall obtain written approval by the Secretary for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) that have purposes consistent with those authorized for support by the Secretary.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from ED or its successor Federal awarding agency. The Secretary observes one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Secretary and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures must be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party. The recipient is entitled to compensation for its attributable percentage of the current fair market value of the property.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Secretary. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Secretary for further ED utilization.

(2) If ED has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Secretary has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821—Improving Mathematics and Science Education in Support of the National Education Goals. Appropriate instructions shall be issued to the recipient by the Secretary.

(b) *Exempt property.* When statutory authority exists, the Secretary may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Secretary considers appropriate. This property is "exempt property." Should the Secretary not establish conditions, title to exempt property upon acquisition vests in the recipient without further obligation to the Federal Government.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient may not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and may not encumber the property without approval of the Secretary. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project; and then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Secretary.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates ED for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Secretary.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:

(1) For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to ED or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Secretary. The Secretary shall determine whether the equipment can be used to meet ED requirements. If no requirement exists within ED, the availability of the equipment shall be reported to the General Services Administration by the Secretary to determine whether a requirement for the equipment exists in other Federal agencies. The Secretary issues instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures govern:

(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse ED an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(ii) If the recipient is instructed to ship the equipment elsewhere, the recipient is reimbursed by ED by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(iii) If the recipient is instructed to otherwise dispose of the equipment, the recipient is reimbursed by ED for costs incurred in its disposition.

(iv) The Secretary may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. This transfer shall be subject to the following standards:

(A) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.

(B) The Secretary issues disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If the Secretary does not issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(C) When the Secretary exercises the right to take title, the equipment is subject to the provisions for federally-owned equipment.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient may not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. ED and any other Federal awarding agency reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.

(c) Unless waived by the Secretary, the Federal Government has the right to—

(1) Obtain, reproduce, publish, or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use these data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Secretary. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 74.34(g).

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.37 Property trust relationship.

Real property, equipment, intangible property, and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Secretary may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Procurement Standards

§ 74.40 Purpose of procurement standards.

Sections 74.41 through 74.48 contain standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. These standards are designed to ensure that these materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The Secretary does not impose additional procurement standards or requirements upon recipients, unless specifically required by Federal statute or executive order or as authorized in §§ 74.4 or 74.14.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Secretary, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of statute are to be referred to Federal, State or local authority that may have proper jurisdiction.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. A conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of these standards by officers, employees, or agents of the recipient.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures must provide for, at a minimum, that—

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; or

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of brand name or equal descriptions that bidders are required to meet when these items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment, and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time

frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.

(d) Contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by E.O. 12549 (implemented by the Secretary in 34 CFR Part 85) and E.O. 12689—Debarment and Suspension.

(e) Recipients shall, on request, make available for the Secretary, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum—

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained;

(c) Basis for award cost or price.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.47 Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract, and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts:

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, contracts must describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Secretary may accept the bonding policy and requirements of the recipient, provided the Secretary has made a determination that the Federal Government's interest is adequately protected. If a determination has not been made, the minimum requirements are as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under a contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223—Surety Companies Doing Business with the United States.

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must

include a provision to the effect that the recipient, ED, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of Appendix A to this part, as applicable.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Reports and Records

§ 74.50 Purpose of reports and records.

Sections 74.51 through 74.53 establish the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also establish record retention requirements.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function, or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements in § 74.26.

(b) The Secretary prescribes the frequency with which the performance reports shall be submitted. Except as provided in § 74.51(f), performance reports are not required more frequently than quarterly or, less frequently than annually. Annual reports are due 90 calendar days after the grant year; quarterly or semi-annual reports are due 30 days after the reporting period. The Secretary may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report is not required after completion of the project.

(d) When required, performance reports must generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, this quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.

(e) Recipients are not required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Secretary of developments that have a significant impact on the award-supported activities. Also, notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The Secretary may make site visits, as needed.

(h) The Secretary complies with the clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.52 Financial reporting.

(a) The following forms or other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A—Financial Status Report.

(i) Recipients are required to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. The Secretary may not require the SF–269 or SF–269A when, the Secretary determines that SF–270—Request for Advance or Reimbursement, or SF–272—Report of Federal Cash Transactions—provides adequate information to meet the Department's needs, except that a final SF–269 or SF–269A is required at the completion of the project when the SF–270 is used only for advances.

(ii) The Secretary prescribes whether the report is on a cash or accrual basis. If the Secretary requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient is not required to convert its accounting system, but shall develop accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Secretary determines the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report is not required more frequently than quarterly or less frequently than annually. A final report is required at the completion of the agreement.

(iv) The Secretary requires recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Secretary upon request of the recipient.

(2) SF–272—Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Secretary requires each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Secretary uses this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The Secretary may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, the Secretary may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Secretary may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) The Secretary may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that advances are monitored through other forms contained in this section;

(B) If, in the Secretary's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Secretary needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, the Secretary shall issue instructions to require recipients to submit information under the "Remarks" section of the reports.

(2) When the Secretary determines that a recipient's accounting system

does not meet the standards in § 74.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until the system is brought up to standard. The Secretary, in obtaining this information, complies with the report clearance requirements of 5 CFR part 1320.

(3) The Secretary may shade out any line item on any report if not necessary.

(4) The Secretary may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The Secretary may provide computer or electronic outputs to recipients when these outputs expedite or contribute to the accuracy of reporting.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.53 Retention and access requirements for records.

(a) This section establishes requirements for record retention and access to records for awards to recipients. The Secretary does not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of five years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Secretary. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 5 years after final disposition.

(3) When records are transferred to or maintained by the Secretary, the 5-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 74.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Secretary.

(d) The Secretary requests transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Secretary may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Secretary, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts, and copies of documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to these documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, the Secretary does not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Secretary can demonstrate that the records must be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to ED.

(g) The starting date for retention of the following types of documents (including supporting records) is specified in paragraphs (g)(1) and (2) of this section: indirect cost rate computations or proposals; cost allocation plans; and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Secretary or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 5-year retention period for its supporting records starts on the date of submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Secretary or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 5-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Termination and Enforcement

§ 74.60 Purpose of termination and enforcement.

Sections 74.61 and 74.62 establish uniform suspension, termination, and enforcement procedures.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.61 Termination.

(a) Awards may be terminated in whole or in part only—

(1) By the Secretary, if a recipient materially fails to comply with the terms and conditions of an award;

(2) By the Secretary with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient, upon sending to the Secretary written notification containing the reasons for the termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Secretary determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 74.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Secretary may, in addition to imposing any of the special conditions outlined in § 74.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Secretary.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the Secretary provides the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Secretary expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if—

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude ED from initiating a debarment or suspension action against a recipient under 34 CFR Part 85 (see § 74.13).

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Subpart D—After-the-Award Requirements

§ 74.70 Purpose.

Sections 74.71 through 74.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Secretary may approve extensions when requested by the recipient.

(b) Unless the Secretary authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in ED implementing instructions.

(c) The Secretary makes prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Secretary has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Secretary makes a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 74.31 through 74.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Secretary shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Secretary to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 74.26.

(4) Property management requirements in §§ 74.31 through 74.37.

(5) Records retention as required in § 74.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Secretary and the recipient, provided the responsibilities of the recipient referred to in § 74.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Secretary may reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Secretary charges interest on an overdue debt in accordance with 4 CFR Chapter II—Federal Claims Collection Standards.

(20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circular A–110)

Appendix A to Part 74—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246—Equal Employment Opportunity, as amended by E.O. 11375—Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3—Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted

Construction). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to ED and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O. 12549 and E.O. 12689)*—No contract may be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O 12549 and E.O. 12689—Debarment and Suspension. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

2. The authority citation for Part 77 continues to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

3. In § 77.1, paragraph (b) is revised, and paragraph (c) is amended by adding the definitions of *Budget* and *Grantee*, and removing the definitions of *Award* and *Project period* as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in part 74 or 80 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of part 74 or 80 that contains the definition is given in parentheses.

Award (§ 74.2)
Contract (includes definition of "Subcontract") (§ 74.2) (§ 80.3)
Equipment (§ 74.2) (§ 80.3)
Grant (§ 80.3)
Personal property (§ 74.2)
Project period (§ 74.2)
Real property (§ 74.2) (§ 80.3)
Recipient (§ 74.2)
Supplies (§ 74.2) (§ 80.3)

(c) * * *

Budget means that recipient's financial plan for carrying out the project or program.

* * * * *

Grantee means the legal entity other than a Government subject to 34 CFR Part 80 to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant. The definition of "grantee" for State, local, and tribal governments is contained in 34 CFR 80.3.

* * * * *

[FR Doc. 94–16159 Filed 7–5–94; 8:45 am]
BILLING CODE 4000–01–P

federal register

Wednesday
July 6, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 551
Smoking/No Smoking Areas; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1007–F]

RIN 1120–AA12

Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising and reorganizing its regulations on Smoking/No Smoking Areas. As revised, designated smoking areas at the Bureau's medical referral centers and minimum security institutions ordinarily shall be outside of buildings and away from entrances. Wardens at all low, medium, high, and administrative institutions other than medical referral centers may continue, but are not required, to designate indoor smoking areas in addition to outdoor smoking areas. Additional provisions have been revised or reorganized for the sake of clarity or to avoid redundancy. This amendment is intended to provide for a clean air environment and to protect the health and safety of staff and inmates.

DATES: Effective August 1, 1994. Bureau Wardens may request up to a six month extension for compliance.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Smoking/No Smoking Areas. A final rule on this subject was published in the **Federal Register** on November 16, 1989 (54 FR 47753).

On February 8, 1994, the Bureau of Prisons published a proposed rule requiring that "smoking areas" to be designated by Wardens at medical referral centers and at minimum security institutions shall ordinarily be outside of all buildings and away from all entrances so as not to expose others to second-hand smoke. As for the remaining Bureau institutions, the proposed rule specifies that the Warden may, but is not required to, designate indoor smoking areas in addition to outdoor smoking areas. The proposed rule also reorganized and revised the regulations for the sake of clarity and to avoid redundancy. For example, the regulations had contained cross references qualifying those locations where smoking ordinarily was not permitted. Because the Warden is responsible for designating smoking areas, ordinarily only where the needs of effective operations so require, the Bureau deems it unnecessary to list in its revised regulations specific locations which would still be subject to the Warden's discretion. The listing of these locations has therefore been removed from the regulation, but remains as guidance in implementing instructions to staff. The revised regulations also contain a nomenclature change in which the title "Warden" has been substituted for "Chief Executive Officer".

The comment period closed on April 11, 1994. The Bureau received comments from only one respondent. The commenter, a public health interest group, stated that it supported the proposal and believed it to be an important health measure. The commenter further recommended that in the cases in which the Warden decides to designate an indoor smoking area, the area should be separately ventilated so that the air is vented directly to the outside and does not mix with the air circulating in other parts of the facility. Finally, the commenter stated that it believed it essential that smoking cessation services for employees and inmates be made available as part of a policy for a smokefree environment.

In response to these comments, the Bureau wishes to note that guidance on ventilation requirements for indoor smoking areas is provided in its internal instructions to staff. Given the limited number of indoor smoking areas which may be authorized under § 551.163(b) and the constraints of operations in a correctional setting, the Bureau believes it unnecessary to include more specific direction in its regulations. The Bureau also wishes to note that separate policy on the provisioning of wellness programs to staff and to inmates does allow for participation in smoking cessation programs. While budget and staff limitations initially may limit such staff and inmate participation to those institutions most affected by the revised regulations, the Bureau is committed to extending program opportunities at all facilities.

Therefore, in light of the above comment and agency response, the Bureau is adopting the proposed amendments as a final rule without change.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99.

2. Subpart N, consisting of §§ 551.160 through 551.163, is revised to consist of §§ 551.160 through 551.164 as follows:

Subpart N—Smoking/No Smoking Areas

Sec.

551.160 Purpose and scope.
551.161 Definitions.
551.162 Designated no smoking areas.
551.163 Designated smoking areas.
551.164 Notice of smoking areas.

Subpart N—Smoking/No Smoking Areas

§ 551.160 Purpose and scope.

To advance towards becoming a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons will restrict areas and circumstances where smoking is permitted within its institutions and offices.

§ 551.161 Definitions.

For purpose of this subpart, smoking is defined as carrying or inhaling a lighted cigar, cigarette, pipe or other lighted tobacco products.

§ 551.162 Designated no smoking areas.

All areas of Bureau of Prisons facilities and vehicles are no smoking

areas unless specifically designated as a smoking area by the Warden as set forth in § 551.163.

§ 551.163 Designated smoking areas.

(a) At all medical referral centers, including housing units, and at minimum security institutions, including satellite camps and intensive confinement centers, the Warden shall identify "smoking areas", ordinarily outside of all buildings and away from all entrances so as not to expose others to second-hand smoke.

(b) At all low, medium, high, and administrative institutions other than medical referral centers, the Warden shall identify outdoor smoking areas and may, but is not required to, designate a limited number of indoor smoking areas where the needs of effective operations so require, especially for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time.

(c) To the maximum extent practicable nonsmoking inmates shall be housed in nonsmoking living quarters.

§ 551.164 Notice of smoking areas.

The Warden shall ensure that smoking areas are clearly identified by the appropriate placement of signs. The *absence* of a sign shall be interpreted as indicating a no smoking area. Appropriate disciplinary action shall be taken for failure to observe smoking restrictions.

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Wednesday
July 6, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability (NOFA) for Service Coordinators for the HOPE for Elderly Independence Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3784; FR–3677–N–01]

Funding Availability (NOFA) for Service Coordinators for the HOPE for Elderly Independence Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for fiscal year (FY) 1994.

SUMMARY: This NOFA announces the availability of up to $5 million in Section 8 fees for service coordinators in conjunction with the HOPE for Elderly Independence Program. Each public housing agency (PHA) that received rental voucher funding and funding for supportive services under the FY 1992 or FY 1993 HOPE for Elderly Independence Program competitions may apply for funds under this NOFA, to employ or otherwise retain the services of up to one service coordinator for a period of up to five years. A part-time service coordinator may be retained where appropriate. The NOFA contains information concerning the deadline for filing applications; eligibility of applicants; available amounts; selection criteria; and the application and selection process.

DATES: Applications are due on August 5, 1994, by 3 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden for this NOFA is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs. Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

	No. of respondents	No. of responses per respondent	Total annual respondents	Hours per response	Total burden hours
	28	1	28	5	140
Total Burden Hours					140

I. Purpose and Substantive Description

(a) Authority

Section 675 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(b) Allocation Amounts

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, approved October 28, 1993), (94 App. Act) made $5 million available for the purposes of section 675 of HCDA 1992. An eligible PHA may apply for a maximum of $250,000 in Section 8 fees to support up to one service coordinator, for up to five years. HUD may fund applications at less than the requested amount, based on the HUD State or Area Office application review.

To the extent that any applicant PHA's required match of 50 percent of the costs of supportive services for the HOPE for Elderly Independence Program included the dollar value of a service coordinator's services, and funding is received under this NOFA to pay the costs of a service coordinator, that dollar value match must be replaced with payment for other supportive services costs.

(c) Eligibility

(1) Eligible Activity

Funds are available under this NOFA to employ or otherwise retain the services of up to one service coordinator for a period of up to five years in conjunction with the HOPE for Elderly Independence Program. A part-time service coordinator may be retained where appropriate.

The HOPE for Elderly Independence Program is intended to demonstrate that effectively targeted and tailored supportive services, coupled with tenant-based rental voucher assistance, can help frail elderly persons continue to live independently in a cost efficient way and prevent premature or unnecessary institutionalization. Effective delivery of supportive services is the critical element in a successful program.

Supportive services for the frail elderly are coordinated by a PHA through a service coordinator and a professional assessment committee (PAC). The PAC is competent to appraise the functional abilities of frail elderly persons with respect to the performance of normal daily living activities. The service coordinator is skilled and trained in dealing with the frail elderly, is a member of the PAC, and is responsible for assuring, through case management, that program participants are linked to the supportive services they need to continue independent living.

(i) A service coordinator's training, educational, and work experiences must meet the following minimum guidelines:

(A) A Bachelor of Social Work or degree in a related field such as gerontology, psychology or counseling is preferable; a college degree is fully acceptable. However, individuals without a degree but with appropriate

work experience may be hired. A PHA may hire a person without a degree, with appropriate justification.

(B) The service coordinator must be trained in the aging process, elder services, disability services, eligibility for and procedures of federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues. This requirement is not a prerequisite for hiring. However, training requirements, if not met at the point of hiring, must be satisfied within one year.

(C) Two years of experience in social services delivery with senior citizens or demonstrated working knowledge of supportive services and other resources for senior citizens in the jurisdiction where the demonstration is located.

(D) Ability to advocate, problem-solve and provide results for the elderly served.

(E) Demonstrated writing and organizational skills.

(ii) A service coordinator performs the following functions:

(A) Consults with frail elderly tenants, service providers, owners and other appropriate persons to identify the particular needs and characteristics of frail elderly persons.

(B) Builds professional relationships with agencies, service providers and volunteers in the community to secure ongoing provision of supportive services and other necessary items for the program. Shops to determine the best value in service pricing to assure individualized, flexible and creative services for the frail elderly. May set up a directory of service providers.

(C) Screens applicants for the HOPE for Elderly Independence Program, reviews any comments from applicants' physicians and the adequacy of applicants' informal support network (i.e., family and friends available to the applicant to assist in meeting daily living needs), conducts preliminary assessments of frailty, refers potentially eligible applicants to the PAC.

(D) Educates program participants on such issues as application procedures, service availability, and client rights providing advocacy as appropriate. Assists participants in making their own choices, refers and links participants to service providers. These are, for example, case management, personal assistance, homemaker assistance, meals-on-wheels, transportation, counseling, occasional visiting nurses, preventive health screening and legal advocacy.

(E) Helps build informal support networks with neighbors, friends and family, with the objective to provide only those services necessary to maintain independence and to avoid dependence. If necessary, assists participants with the decision to move to a higher level of care.

(F) Ensures that the services included in participants' case plans are provided on a regular, ongoing and satisfactory basis. Completes and maintains case files for the PAC including records of assessments, case plans, referrals, case monitoring, and reassessments. Keeps the PAC and the service providers informed of the progress of participants. Recommends reassessments as necessary.

(G) Educates other PHA staff on issues related to aging in-place and services coordination to help them assist other frail elderly program participants.

(iii) Staffing Guidelines. Under normal circumstances, a full-time service coordinator should be able to serve about 50 frail elderly participants.

(2) Eligible Applicants

Only the following PHAs, which received Section 8 rental voucher funding and funding for supportive services under the FY 1992 or FY 1993 HOPE for Elderly Independence Program competitions, are eligible to apply for funds under this NOFA:

West Hartford Housing Authority, CT
City of Westbrook Housing Authority, ME
Lynn Housing Authority, MA
Sommerville Housing Authority, MA
New Hampshire Housing Finance Authority
New Jersey Department of Community Affairs
Erie County, NY
Fayette County Housing Authority, PA
Jefferson County Housing Authority, KY
Kentucky Housing Corporation
Fayette Metropolitan Housing Authority, OH
Eau Claire County Housing Authority, WI
White River Regional Housing Authority, AK
Miami Housing Authority, OK
Oklahoma City Housing Authority, OK
El Paso Housing Authority, TX
Des Moines Housing Authority, IA
Waterloo Housing Authority, IA
Boulder County, CO
Jefferson County Housing Authority, CO
Mesa City, AZ
Tucson City, AZ
Alameda County Housing Authority, CA
Los Angeles City Housing Authority, CA
Redding City, CA
Everett Housing Authority, WA
Richland Housing Authority, WA
Seattle Housing Authority, WA

(d) Selection Process

Applications will be reviewed to determine whether or not they are technically adequate based on the requirements of this NOFA. All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will reduce the amount of funds to be provided to each PHA in direct proportion to the funds available.

II. Application Process

Application Submission—Place and Time: Applications are due in the local HUD State or Area Office on August 5, 1994 by 3:00 p.m. local time. This application deadline is firm as to date and hour. HUD will not accept applications via facsimile (fax) transmission. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

Each application for funding under this NOFA must contain the following items:

(a) Request for Service Coordinator Funds

All applications must contain the following information stated in a letter from the Executive Director of the PHA to the Director of the Public Housing Division in the local HUD State or Area Office (see sample letter format, Attachment 1):

(1) The total number of HOPE for Elderly Independence Program participants.

(2) The dollar amount of any PHA matching funds for supportive services costs under the HOPE for Elderly Independence Program that is attributable to the costs of a service coordinator. If funds are received under this NOFA to pay service coordinator costs that were formerly part of the PHA's required match, that dollar value match must be replaced with payment for other additional supportive services costs. The PHA's application must identify any replacement supportive services and their costs, and include firm written commitments from the service providers for at least the first year's funding.

(3) The annual salary proposed for the service coordinator, plus any fringe benefits and administrative costs (e.g., additional office equipment, supplies, car allowance, copying, training, etc.) for the first year, the amounts needed for years two through five, and the total

amount requested for the complete five year period.

The service coordinator salary should be based on the following formula:

(i) Determine the salary level, taking into consideration salaries for comparable jobs, modified by the hours worked.

(ii) Set the annual salary, including any fringe benefits that pertain to the job.

(iii) List first year administrative costs.

(iv) Set the total cost for year one: Annual salary, plus first year administrative costs, equals total cost for the first year.

(v) The estimates for years two through five (or less) may be based on an annual inflation factor of up to five percent. Any one-time, first-year start-up costs should be subtracted from the year one administrative cost before calculating the year two through five estimates.

EXAMPLE

	Salary	Fringes	Admin. costs	Total
Year 1	$20,000	$5,000	$2,000	$27,000
Year 2	21,000	5,250	500	26,750
Year 3	22,150	5,550	500	28,200
Year 4	23,350	5,800	550	29,700
Year 5	24,550	6,150	550	31,250
Grand Total	111,050	27,750	4,100	142,900

(4) Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

(5) Whether the PHA will contract out for a service coordinator.

(b) Required Certification Forms

The following certification forms are required to be submitted with the application and are attached to this NOFA:

(1) Certification Regarding Drug-Free Workplace Requirements (Attachment 2);

(2) Certification Regarding Lobbying (Attachment 3);

(3) Standard Form LLL, Disclosure of Lobbying Activities (Attachment 4, if applicable); and

(4) Certifications regarding Fair Housing and Equal Opportunity (Attachment 5).

(i) The HUD review criteria shall include an analysis of any evidence that challenges the validity of the civil rights certification. Such evidence includes:

(A) A pending civil rights suit against the PHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(B) Outstanding HUD findings of PHA noncompliance with civil rights statutes, regulations and executive orders, as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved tenant selection and assignment plan and a voluntary compliance agreement designed to correct the areas of noncompliance;

(C) A deferral of the processing of applications from the PHA imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57);

(D) A pending proceeding against the PHA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of discrimination is a Charge under Section 810(g)(2) of the Fair Housing Act, issued by the Department's General Counsel or legally authorized designee.

(E) There is an adjudication of a civil rights violation in a civil action brought against it by a private individual; unless the PHA demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance.

(ii) In the event that the validity of a civil rights certification is drawn into question the application is eligible to be funded, but the PHA may not draw down funds until it has satisfied any outstanding civil rights issues.

IV. Corrections to Deficient Applications

The HUD State or Area Office will screen all applications and notify applicants of technical deficiencies by letter. Since the funds available under this NOFA are not being awarded on a competitive basis, a technical deficiency would be a significant discrepancy in information supplied by the applicant and information available to HUD, or the omission or the incomplete submission of any of the items required to be submitted in the application. These are listed in section III. of this NOFA, Checklist of Application Submission Requirements, above.

Applicants must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m., local time, on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24, CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(b) Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA makes funds available for PHAs to employ or otherwise retain the services of up to one service coordinator for a period of up to five years in conjunction with the HOPE for Elderly Independence Program. As such, there are no direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(c) Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a

significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

(d) Documentation and Public Access Requirements: HUD Reform Act

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(e) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(f) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Dated: June 29, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

REQUEST FOR SERVICE COORDINATOR FUNDS—SAMPLE LETTER FORMAT

Dear Director, Public Housing Division:

This is to request approval to hire a service coordinator for X years, for the X public housing agency (PHA) HOPE for Elderly Independence Demonstration Program..

1. Total Number of HOPE for Elderly Independence participants _____.

2. Dollar amount, if any, of PHA 50 percent match for supportive services costs under the HOPE for Elderly Independence Program that is attributable to the costs of a service coordinator: _____.

If this request is approved to pay the costs of a service coordinator that were formerly part of the PHA's required match, that dollar value match will be replaced with payment for the following supportive services costs:

[Identify the replacement supportive services and their costs, and attach firm written commitments from the service providers for at least the first year's funding.]

3. Service Coordinator Salary:

a. *Salary level*, based on salaries for comparable jobs (modified by number of hours worked) _____.

b. *Annual Salary* plus Fringe Benefits: _____Hours/Week; _____ $/Hour; _____Fringe Rate (%); Annual Salary _____.

c. *Administrative Costs* (list):

Total Administrative Costs _____.

d. Total Cost per Year:

Annual Salary _____

+ Administrative Costs _____

Total Cost per Year _____

4. Request for Five Years (or Less):

	Salary	Fringes	Admin. costs	Total
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				
Grand Total				

4. The PHA will contract out for a service coordinator: Yes_____ No _____

5. Attachment: Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director.

Attachment(s)

Certification Regarding Drug-Free Workplace Requirements (From 24 CFR, Appendix C) Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-33-P

ATTACHMENT 4

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
☐ c. cooperative agreement
☐ d. loan
☐ e. loan guarantee
☐ f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
☐ c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one--time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

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Standard Form-LL

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproducti
Standard Form-LLL

BILLING CODE 4210-33-C

Fair Housing and Equal Opportunity Certifications

The public housing agency (PHA) certifies that, in administering the activities of elderly service coordinators:

(1) The PHA will comply with Title VI of the Civil Rights Act of 1964 and related HUD regulations (24 CFR Part 1), which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The PHA will comply with the Fair Housing Act and related HUD regulations (24 CFR Part 100), which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The PHA will comply with Section 504 of the Rehabilitation Act of 1973 and related HUD regulations (24 CFR Part 8), which state that no otherwise qualified individual with handicaps in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(4) The PHA will comply with the provisions of the Age Discrimination Act of 1975 and related HUD regulations (24 CFR Part 146), which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(5) The PHA will comply with the provisions of Title II of the Americans with Disabilities Act and related Department of Justice regulations (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

(6) The PHA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, and related HUD regulations (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located.

Name of PHA

Signature and Title of PHA Representative

Date

[FR Doc. 94–16292 Filed 7–5–94; 8:45 am]

BILLING CODE 4210–33–P

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Federal Register

Vol. 59, No. 128

Wednesday, July 6, 1994

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S. 24/P.L. 103–270

Independent Counsel Reauthorization Act of 1994 (June 30, 1994; 108 Stat. 732; 8 pages)

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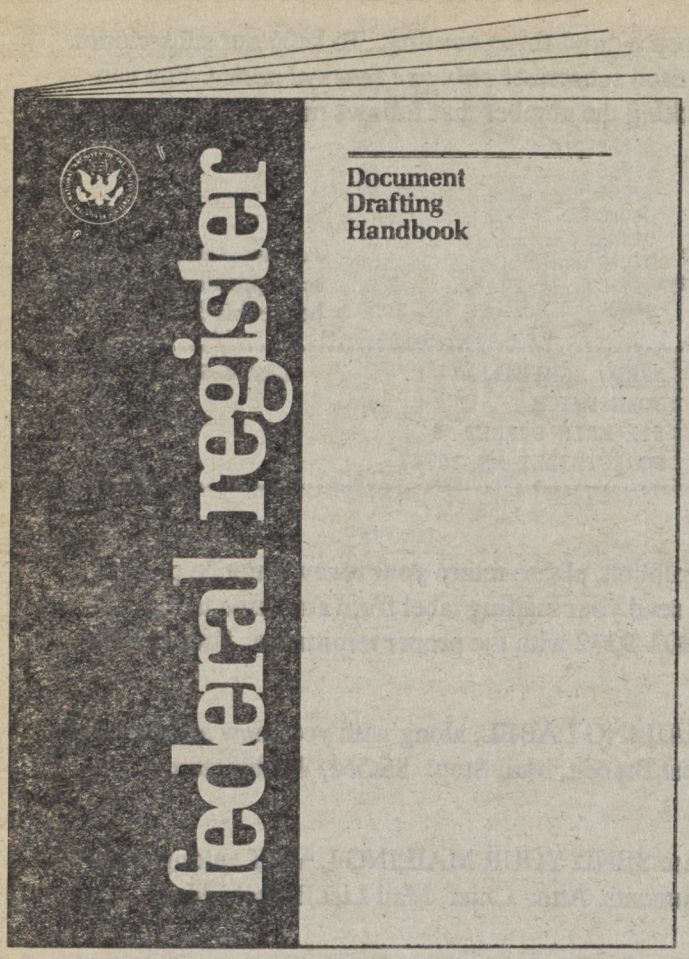

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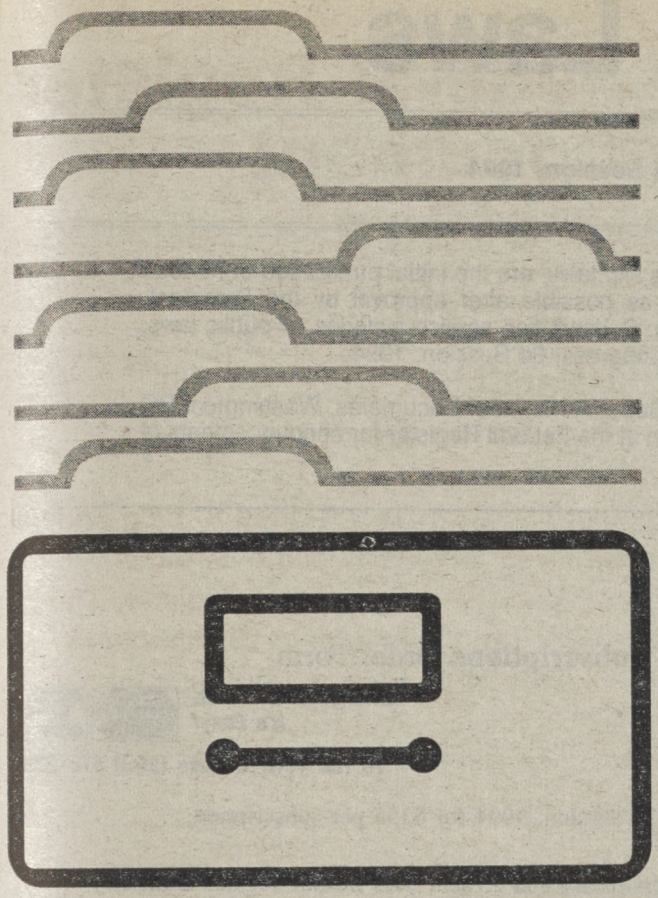

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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