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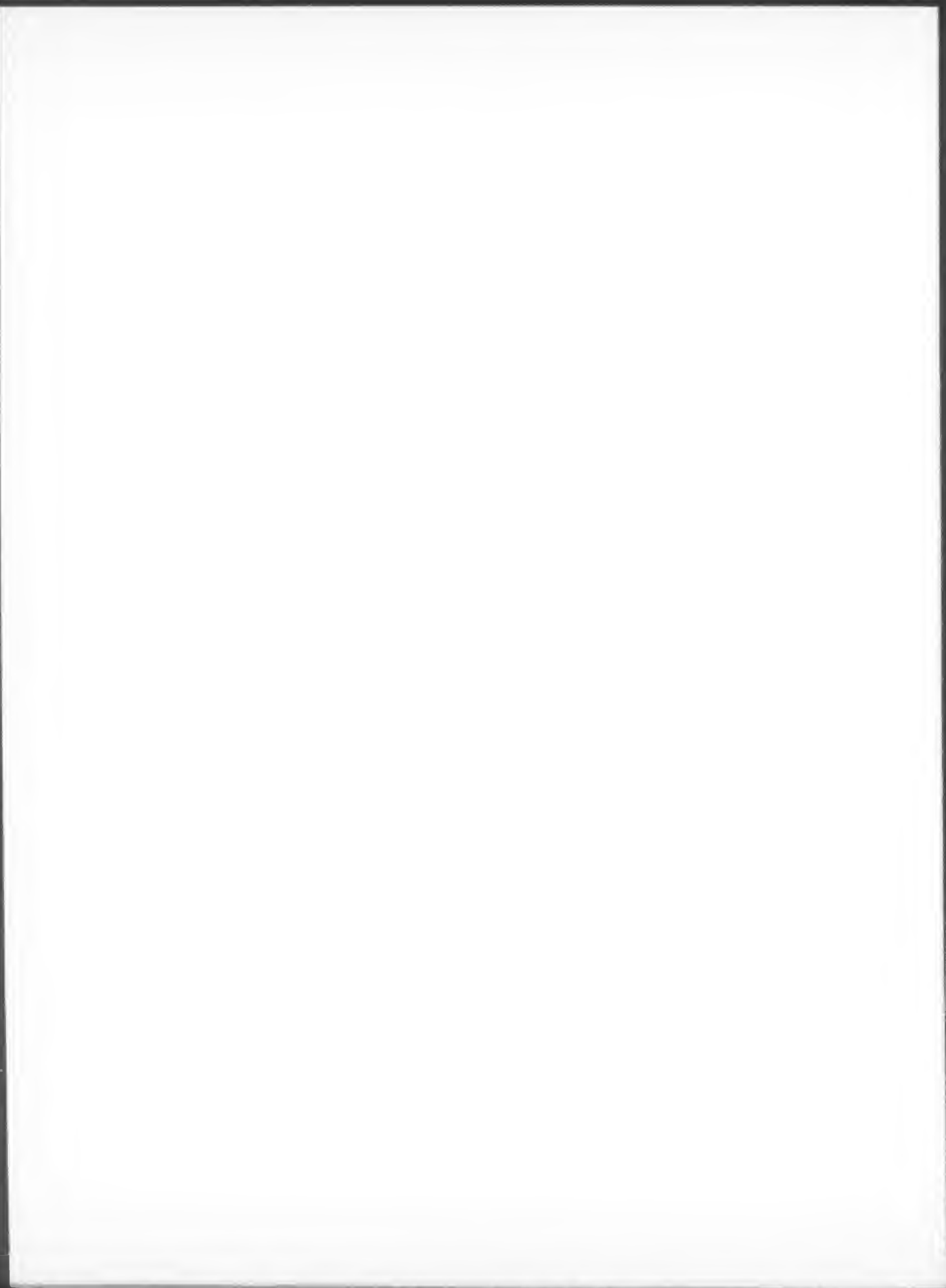
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Briefings on How To Use the Federal Register
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of this issue.



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
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 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

- When:** September 15 at 9:30 a.m.
Where: Jimmy Carter Presidential Library
 One Copenhill Avenue, Atlanta, GA
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WASHINGTON, DC

(two briefings)

- When:** September 17 at 9:00 am and 1:30 pm
Where: Office of the Federal Register, 7th Floor
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 NW, Washington, DC (3 blocks north of
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- Reservations:** 202-523-4538



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Contents

Federal Register

Vol. 58, No. 173

Thursday, September 9, 1993

Agriculture Department

See Forest Service

NOTICES

Agency information collection activities under OMB review, 47431

Air Force Department

NOTICES

Senior Executive Service:

Performance Review Boards; membership, 47433

Antitrust Division

NOTICES

Competitive impact statements and proposed consent judgments:

American Machine & Foundry Co., Inc., et al., 47478

Army Department

NOTICES

Military traffic management:

Personal property traffic management regulation; household goods shipping containers; rate solicitation, 47433

Children and Families Administration

PROPOSED RULES

State plan requirements:

Child support enforcement program and audit regulations; revision, 47417

NOTICES

Grants and cooperative agreements; availability, etc.:

Native American social and economic development projects, 47590

Commerce Department

See National Oceanic and Atmospheric Administration

Customs Service

PROPOSED RULES

Country of origin marking:

Frozen produce, 47413

NOTICES

Country of origin marking:

Eritrea, 47527

Defense Department

See Air Force Department

See Army Department

See Navy Department

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:

Arenol Chemical Corp., 47478

Mallinckrodt Specialty Chemicals Co., 47479

Energy Department

See Energy Information Administration

See Federal Energy Regulatory Commission

NOTICES

Grant and cooperative agreement awards:

California Institute of Technology, 47434

Industra Inc., 47435

Southwest Research Institute, 47435

Structural Insulated Panel Association, 47436

Privacy Act:

Systems of records, 47436

Recommendations by Defense Nuclear Facilities Safety Board:

Hanford Site, WA—

High level storage tanks waste characterization program, 47438

Energy Information Administration

NOTICES

Agency information collection activities under OMB review, 47438

Environmental Protection Agency

RULES

Air programs:

Outer Continental Shelf regulations

Correction, 47398

Air quality implementation plans; approval and promulgation; various States; and air quality planning purposes; designation of areas:

Illinois, 47379

New Mexico, 47383

North Carolina, 47391

Oregon, 47385

PROPOSED RULES

Air quality implementation plans:

Small Non-Road Engine Negotiated Rulemaking

Committee; meeting, 47414

Air quality implementation plans; approval and promulgation; various States:

Illinois, 47414

Indiana, 47415

Water pollution control:

National pollutant discharge elimination system; State programs—

South Dakota; correction, 47417

NOTICES

Air programs:

Ambient air monitoring reference and equivalent methods—

Advanced Pollution Instrumentation Inc.; Model 300

Gas Filter Correlation CO Analyzer, 47446

Confidential business information and data transfer to contractors, 47446

Meetings:

Federal Facilities Environmental Restoration Dialogue Committee, 47447

Superfund; response and remedial actions, proposed settlements, etc.:

Elsinore Drum Site, CA, 47447

Toxic and hazardous substances control:

Premanufacture notices; monthly status, 47616

Premanufacture notices receipts, 47448, 47453

Water pollution control:

Clean Water Act—

Class II administrative penalty assessments, 47454

Executive Office of the President

See Trade Representative, Office of United States

Federal Aviation Administration

RULES

Class D and Class E airspace, 47371, 47372

Class E airspace, 47373, 47374

Jet routes, 47375

PROPOSED RULES

Airworthiness directives:

Allied Signal Aerospace Co., 47405

Honeywell, 47407

Rockwell International, 47409

Class E airspace, 47411

Jet routes, 47413

Rulemaking petitions; summary and disposition, 47405

NOTICES

Airport noise compatibility program:

Noise exposure map—

Wittman Regional Airport, WI, 47521

Exemption petitions; summary and disposition, 47522

Federal Communications Commission

NOTICES

Rulemaking proceedings; petitions filed, granted, denied, etc., 47454

Federal Election Commission

NOTICES

Meetings; Sunshine Act, 47530

Federal Energy Regulatory Commission

NOTICES

Electric rate, small power production, and interlocking directorate filings, etc.:

Pennsylvania Electric Co. et al., 47439

Natural Gas Policy Act:

State jurisdictional agencies tight formation recommendations; preliminary findings—

Land Management Bureau, 47441

Applications, hearings, determinations, etc.:

Carnegie Natural Gas Co., 47441

Great Lakes Gas Transmission Limited Partnership, 47441

Gulf States Pipeline Corp., 47442

High Island Offshore System, 47442

Mississippi River Transmission Corp., 47442

Nordic Power of Southpoint I Limited Partnership, 47442

Northwest Pipeline Corp., 47443

Overthrust Pipeline Co., 47443

Pacific Gas Transmission Co., 47443

Southern Natural Gas Co., 47444

Texas Eastern Transmission Corp., 47444, 47445

Texas Gas Transmission Corp., 47445

U-T Offshore System, 47446

Federal Mine Safety and Health Review Commission

NOTICES

Meetings; Sunshine Act, 47530

Federal Reserve System

PROPOSED RULES

Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):

Loans to holding companies and affiliates, 47400

NOTICES

Federal Open Market Committee:

Domestic policy directives, 47454

Applications, hearings, determinations, etc.:

Batheke, Warren E., et al., 47455

Bergen North Financial, M.H.C., et al., 47455

First Commerce Corp. et al., 47456

Green Point Savings Bank Employee Stock Ownership Trust et al., 47456

NationsBank Corp. et al., 47457

PNC Bank Corp. et al., 47457

Toronto-Dominion Bank, 47458

Federal Retirement Thrift Investment Board

NOTICES

Meetings; Sunshine Act, 47530

Federal Trade Commission

NOTICES

Prohibited trade practices:

Columbia Hospital Corp. et al., 47458

Revlon, Inc., et al., 47463

Trans Union Corp., 47466

Financial Management Service

See Fiscal Service

Fiscal Service

NOTICES

Surety companies acceptable on Federal bonds:

ACSTAR INSURANCE CO.; correction, 47527

Fish and Wildlife Service

PROPOSED RULES

Endangered and threatened species:

Arroyo southwestern toad, 47428

Food and Drug Administration

RULES

Animal drugs, feeds, and related products:

Follicle stimulating hormone, 47376

Human drugs:

Hormone-containing drug products, topically applied (OTC), 47608, 47611

Ingrown toenail relief drug products (OTC), 47602

PROPOSED RULES

Cosmetics:

Products containing certain hormone ingredients, 47611

Forest Service

NOTICES

Appeal exemptions; timber sales:

Kootenai National Forest, MT, 47431

Wallowa-Whitman National Forest, OR, 47432

Meetings:

Allegheny Wild and Scenic River Southern and Northern Advisory Councils, 47432

General Services Administration

RULES

Acquisition regulations:

Service contracts; price adjustment clause, 47398

Geological Survey

NOTICES

National Environmental Policy Act; implementation, 47473

Health and Human Services Department

See Children and Families Administration

See Food and Drug Administration

See National Institutes of Health

See Social Security Administration

Housing and Urban Development Department**RULES**

Mortgage and loan insurance programs:
Federal claims collection, 47377

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

NOTICES

Central Utah Water Conservancy District:
Environmental statements; availability, etc.—
Colorado River Storage Project; meetings, 47468

International Trade Commission**NOTICES**

Import investigations:
Color negative photographic paper and chemical components from Japan et al., 47475
In-line roller skates with ventilated boots and with axle aperture plugs and component parts, 47475
Mechanical gear couplings and components, 47476
Sebacic acid from—
China, 47476
Sports sandals and components, 47476

Interstate Commerce Commission**NOTICES**

Environmental statements; availability, etc.:
Burlington Northern Railroad Co., 47477

Justice Department

See Antitrust Division
See Drug Enforcement Administration

Labor Department**NOTICES**

Committees; establishment, renewal, termination, etc.:
Employee Welfare and Pension Benefit Plans Advisory Council, 47479

Land Management Bureau**NOTICES**

Environmental statements; availability, etc.:
Lake County communities to Geysers Geothermal Field, CA; effluent pipeline, 47469
Motor vehicle use restrictions:
Montana, 47469
Opening of public lands:
Oregon, 47470, 47471
Washington, 47471
Realty actions; sales, leases, etc.:
California, 47472
Nevada, 47472
Withdrawal and reservation of lands:
Oregon, 47473

Merit Systems Protection Board**NOTICES**

Questions and answers; publication availability; call for riders:
Whistleblower appeals, 47479

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration**NOTICES**

Agency information collection activities under OMB review, 47480

Meetings:

Advisory Council task forces, 47480
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Qvinta, Inc., 47481

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:
Occupant crash protection—
Automatic safety belts; rulemaking terminated, 47426
Warning light for unfastened automatic safety belts; petition denied, 47427

NOTICES

Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 47524, 47525

National Institutes of Health**NOTICES**

Grants and cooperative agreements; availability, etc.:
Human respiratory syncytial virus; live attenuated vaccine viruses development, 47468

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 47428

NOTICES

Permits:
Endangered and threatened species, 47433

National Science Foundation**NOTICES**

Agency information collection activities under OMB review, 47481

Navy Department**NOTICES**

Environmental statements; availability, etc.:
Guam from Philippines; facilities development and relocation of activities, 47434

Nuclear Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:
Sacramento Municipal Utility District, 47481
Meetings:
Nuclear Safety Research Review Committee, 47482

Office of United States Trade Representative

See Trade Representative, Office of United States

Public Health Service

See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 47483
New York Stock Exchange, Inc., 47484, 47485
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 47489

Applications, hearings, determinations, etc.:

Colonial Government Trust, 47490
Guardian Cash Management Trust, 47490
IDEX II Series Fund et al., 47491
John Hancock Mutual Variable Life Insurance Account
UV et al., 47495, 47501
Lincoln Benefit Life Co. et al., 47504
Providentmutual Life & Annuity Co. of America et al.,
47506
Public utility holding company filings, 47508
Quest for Value Accumulation Trust et al., 47509
Security Action Fund, 47512
Shearson Lehman Daily Dividend Inc. et al., 47513,
47515
Transamerica Occidental Life Insurance Co. et al., 47516

Small Business Administration

RULES

Small business size standards:
Procurement automated source system; information
reliability, 47371

NOTICES

Agency information collection activities under OMB
review, 47518, 47519

Disaster loan areas:

Illinois, 47519
Minnesota, 47519
North Dakota, 47519
Pennsylvania et al., 47520
South Dakota, 47520
Texas, 47520
Wisconsin, 47520

License surrenders:

James River Capital Associates, L.P., 47520

Meetings; district and regional advisory councils:
New Jersey, 47521

Social Security Administration

RULES

Supplemental security income:
Children under age 18; disability determinations, 47532

State Department

NOTICES

Meetings:
Shipping Coordinating Committee, 47521

Surface Mining Reclamation and Enforcement Office

PROPOSED RULES

Bond and insurance requirements:
Alternative bonding system; provisions and requirements,
47598

Trade Representative, Office of United States

NOTICES

Generalized System of Preferences:
Ukraine; beneficiary developing country designation
criteria, 47482

Transportation Department

See Federal Aviation Administration
See National Highway Traffic Safety Administration
NOTICES

Meetings:

Commercial Space Transportation Advisory Committee,
47521

Treasury Department

See Customs Service
See Fiscal Service

United States Information Agency

NOTICES

Grants and cooperative agreements; availability, etc.:
Secondary school initiative for short term exchange
projects, 47527

Separate Parts in This Issue

Part II

Department of Health and Human Services, Social Security
Administration, 47532

Part III

Department of Health and Human Services, Administration
for Children and Families, 47590

Part IV

Department of the Interior, Office of Surface Mining
Reclamation and Enforcement, 47598

Part V

Department of Health and Human Services, Food and Drug
Administration, 47602

Part VI

Department of Health and Human Services, Food and Drug
Administration, 47608

Part VII

Environmental Protection Agency, 47616

Reader Aids

Additional information, including a list of public
laws, telephone numbers, and finding aids, appears
in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public
Law numbers, Federal Register finding aids, and a list
of Clinton Administration officials is available
on 202-275-1538 or 275-0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR**Proposed Rules:**

215.....47400

13 CFR

121.....47371

14 CFR71 (6 documents).....47371,
47372, 47373, 47374, 47375**Proposed Rules:**

Ch. I.....47405

39 (3 documents).....47405,
47407, 4740971 (2 documents).....47411,
47413**19 CFR****Proposed Rules:**

175.....47413

20 CFR

416.....47532

21 CFR310 (2 documents).....47602,
47608

510.....47376

522.....47376

Proposed Rules:

700.....47611

701.....47611

24 CFR

25.....47377

201.....47377

30 CFR**Proposed Rules:**

800.....47598

40 CFR52 (4 documents).....47379,
47383, 47385, 47391

55.....47398

81.....47391

Proposed Rules:

Ch. I.....47414

52 (2 documents).....47414,
47415

123.....47417

45 CFR**Proposed Rules:**

301.....47417

305.....47417

48 CFR

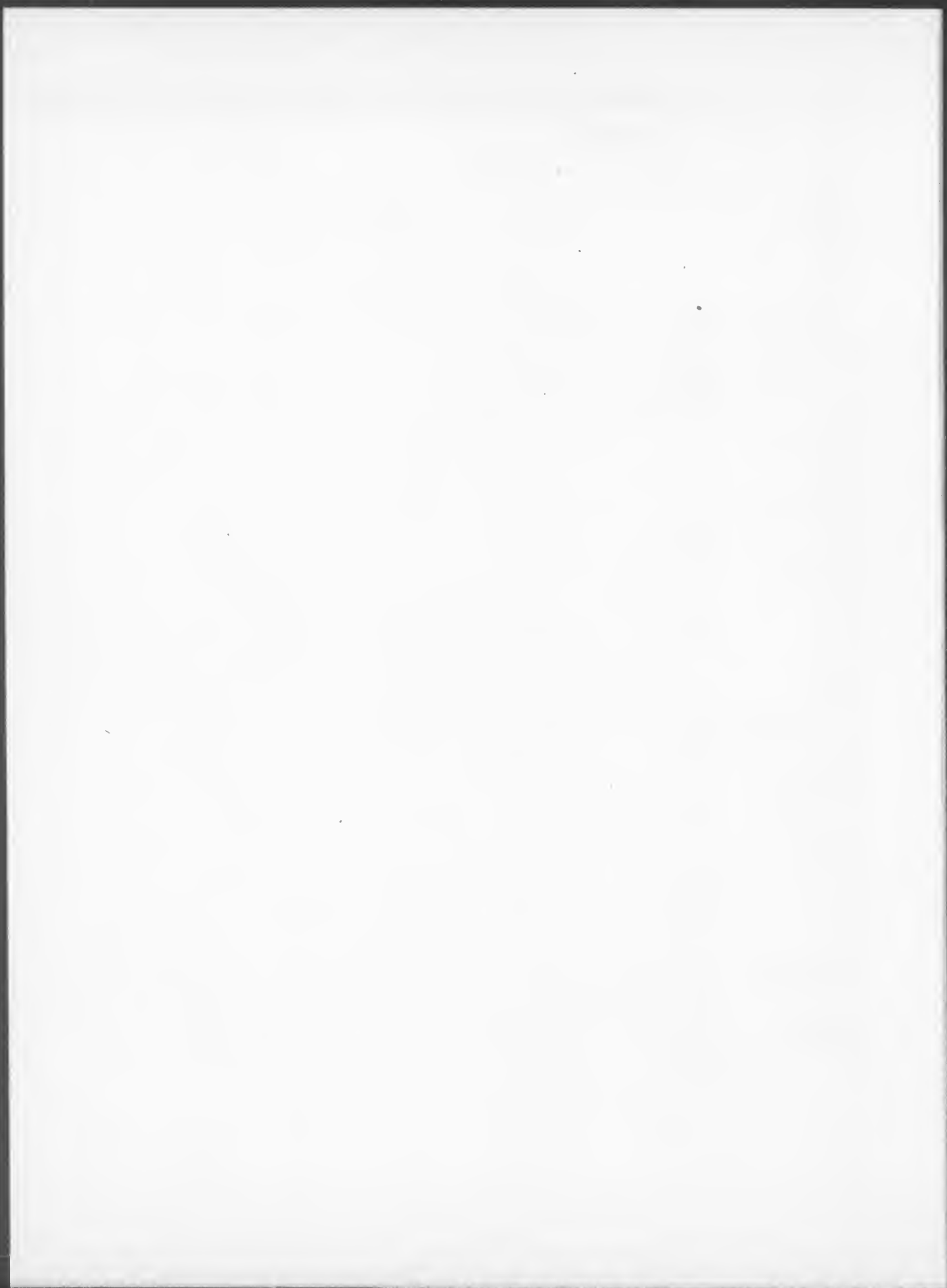
522.....47398

552.....47398

49 CFR**Proposed Rules:**571 (2 documents).....47426,
47427**50 CFR****Proposed Rules:**

17.....47428

642.....47428



Rules and Regulations

Federal Register

Vol. 58, No. 173

Thursday, September 9, 1993

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

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its size regulations to provide that prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list.

DATES: This rule is effective on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine B. Thomas, Procurement Analyst, (202) 205-6460.

SUPPLEMENTARY INFORMATION: The SBA is amending its size regulations to make a general policy statement that prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for the purpose of maintaining a small business source list.

It is currently the practice of many prime contractors to maintain elaborate systems to get annual certifications from subcontractors that they are small business concerns. This information is already contained in SBA's PASS System, and SBA updates the information on an annual basis by obtaining a current small business certification from each company listed in the PASS System. SBA believes that reliance on the information contained in PASS to maintain small business source lists will save prime contractors a significant amount of time and money each year by eliminating the need for them to obtain annual certifications. At

the same time, small businesses would be relieved of the burden of responding to such requests from their prime contractors.

This does not affect the existing requirement that a concern must self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

SBA is publishing this rule setting forth a general statement of Agency policy without prior notice or an opportunity for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(A).

Compliance With Executive Orders 12291, 12612 and 12778, the Regulatory Flexibility Act (55 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35)

For purposes of Executive Order 12291, SBA certifies that this final rule is not considered a major rule because it would not have an annual economic effect in excess of \$100 million, it would not lead to a major increase in costs, and it would not have an adverse effect on competition. This rule effects no substantive change to SBA's regulations and does not affect the rights of any party. Rather, this rule is meant to provide contractors with an efficient, cost-effective means of undertaking a task they are presently doing. In fact, SBA believes that this rule will result in collective savings to prime contractors and small businesses of more than \$6 million per year.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not have new or additional reporting or recordkeeping requirements.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Small business.

For the reasons set forth above, part 121 of title 13, Code of Federal Regulations, is amended as follows.

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

§ 121.91 [Amended]

2. Section 121.911(a) is revised to read as follows:

(a) Prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS) as an accurate representation of a concern's size for purposes of maintaining a small business source list. However, although a prime contractor may rely on the information contained in PASS for purposes of maintaining a small business source list, this does not remove the requirement that a concern must qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor as set forth in § 121.905(a).

* * * * *
Dated: September 2, 1993.

Erskine B. Bowles,
Administrator.

[FR Doc. 93-22014 Filed 9-8-93; 8:45 am]
BILLING CODE 9025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ANM-2]

Amendment of Class D Airspace and Establishment of Class E Airspace; Aurora, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Buckley Air National Guard Base (ANGB), Aurora, Colorado, Class D airspace and also establishes new Class E airspace. It is necessary to amend the airspace descriptions concurrent with

establishment of the new Denver Airport Class B airspace. Airspace Reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with the designation "Class D" or "Class E airspace." The airspace will be depicted on aeronautical charts for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 93-ANM-2, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Buckley ANG Base airspace.

On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the "control zone" for the Buckley ANG Base at Aurora, Colorado (58 FR 31486). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, discontinued use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with the designations "Class D and Class E airspace" for airspace extending upward from ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice.

The coordinates are in North American Datum 83. Class D and Class E airspace designations are published in Paragraphs 5000 and 6004, respectively, 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 8, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations amends Class D airspace and establishes Class E airspace at The Buckley ANG Base at Aurora, Colorado, to adjust with the amendment and relocation of the Denver Class B airspace.

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 "major rule" under Executive Order 12291; (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 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 5000 General

* * * * *

ANM CO D Aurora, CO [Revised]

Buckley ANG Base, CO
(lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 7,500 feet MSL within a 4.4-mile radius of the Buckley ANG Base, excluding that airspace within the Denver International Airport Class B airspace Areas A and C.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D surface area

* * * * *

ANM CO E4 Aurora, CO [New]

Buckley ANG Base, CO
(lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 7,500 feet MSL within 2 miles each side of the Buckley Runway 32 ILS localizer southeast course extending from the 4.4-mile radius to 7.5 miles southeast of the airport.

* * * * *

Issued in Seattle, Washington, on August 26, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-21977 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-ANM-3]

Amendment of Class D and Class E Airspace; Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Centennial Airport, Englewood, Colorado, Class D and Class E airspace. It is necessary to amend the airspace descriptions concurrent with amendment and relocation of the Denver Class B airspace to the new Denver International Airport location. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with the designations "Class D" and "Class E airspace." The Class D and Class E airspace will be depicted on aeronautical charts for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 93-ANM-3, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at Centennial Airport, Englewood, Colorado (58 FR 31485). Interested parties were invited to

participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Centennial Airport Class D and Class E airspace.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with Class D and Class E airspace extending upward from ground level. Other than those changes in terminology, this amendment is the same as that proposed in the notice. The coordinates in this final rule are in North American Datum 83.

Class D airspace designations for airspace extending upward from ground level are published in Paragraph 5000 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 D airspace designation listed in this document will be published subsequently in the Order.

Class E airspace designations for airspace extending upward from ground level are published in Paragraph 6004 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 amends Class D and Class E airspace at Centennial Airport, Englewood, Colorado, to adjust with the amendment and relocation of the Denver Class B airspace.

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 "major rule" under Executive Order 12291; (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 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 5000 General.

* * * * *

ANM CO D Englewood, CO [Revised]

Centennial Airport CO
(lat. 39°34'13" N, long. 104°50'58" W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 4.4-mile radius of the Centennial Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004—Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ANM CO E4 Englewood, CO [Revised]

Centennial Airport, CO
(lat. 39°34'13" N, long. 104°50'58" W)

That airspace extending upward from the surface within 2.5 miles each side of the 178° bearing from the Centennial Airport extending from the 4.4-mile radius to 14 miles south of the airport, and within 2 miles each side of the 111° bearing from the Centennial Airport extending from the 4.4-mile radius to 4.8 miles southeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on August 24, 1993.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 93-21975 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-ANM-5]

Amendment of Class E Airspace; Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Denver, CO. This action is necessary to amend the airspace description concurrent with amendment and relocation of the Denver Class B airspace from the Stapleton Airport to the new Denver International Airport. The Class E airspace will be depicted on aeronautical charts for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 93-ANM-5, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Denver Airport Class E airspace. The requirement for two other parcels of Class E airspace is thus nullified, and are removed in this action. On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Denver Transition Areas (58 FR 31484).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. Other than that change in terminology, this amendment

is the same as that proposed in the notice. The coordinates in this final rule are in North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level 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 amends Class E airspace at Denver, Colorado, so as to concurrently adjust with the amendment and relocation of the Denver Class B airspace.

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 "major rule" under Executive Order 12291; (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 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 Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM CO E5 Denver Centennial Airport, CO [Removed]

ANM CO E5 Denver, CO [Revised]

Denver International Airport, CO
(lat. 39°51'38" N, long. 104°40'24" W)
Denver VOR (lat. 39°48'44" N, long.
104°39'36" W.)
Centennial Airport, CO (lat. 39°34'13" N,
long. 104°50'58" W.)

That airspace extending upward from 700 feet above the surface within a 28-mile radius of the Denver VOR, and within 3.5 miles west and 8.8 miles east of the 178° bearing from the Centennial Airport extending from the 28-mile radius to 17.8 miles south of the Centennial Airport; and that airspace extending upward from 1,200 feet above the surface on the north beginning at lat. 40°30'00" N, long. 106°00'02" W., thence east along lat. 40°00'00" N, thence northeast along V-361, thence east along lat. 41°30'00" N., thence south along the Colorado-Nebraska State boundary, thence southwest along V-8, thence south along V-169, thence west along lat. 39°00'00" N., thence north along long. 106°00'02" W., to the point of beginning, excluding airspace within Federal Airways.

* * * * *

ANM CO E5 Erie, CO [Removed]

* * * * *

Issued in Seattle, Washington, on August 24, 1993.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 93-21976 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-AGL-16]

Modification of Class E Airspace; Oscoda, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the airspace description associated with Oscoda, Michigan Class E airspace. The reason for this modification is to correct the reference to Wurtsmith Air Force Base (AFB) Airport which was renamed to Oscoda-Wurtsmith Airport. Air Force operations will no longer be conducted at Oscoda-Wurtsmith Airport. This name change requires modification of the airspace description so that the airspace is accurately identified. The correct airport name will be depicted on aeronautical charts to provide a reference for pilots operating in the area.
EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT:

Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

The modification made by this rule is editorial in nature and does not require any specific airspace charting design changes, therefore, a Notice of Proposed Rulemaking (NPRM) was not issued. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with "Class E airspace" for transition area airspace extending upward from 700 feet or more above ground level. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9 dated June 17, 1993 and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 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 modifies a Class E airspace description due to a change in airport name from Wurtsmith AFB Airport to Oscoda-Wurtsmith Airport. The modified description will provide accurate reference for aircraft navigating these areas.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979); and (3) does not warrant preparation of 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 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designation 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 MI E5 Oscoda, MI [Revised]

Oscoda-Wurtsmith Airport, MI
(lat. 44°27'05" N., long. 83°23'39" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Oscoda-Wurtsmith Airport.

* * * * *

Issued in Des Plaines, Illinois, on September 3, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93-21978 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASO-20]

Realignment of Jet Route J-89

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description of Jet Route J-89 located in the vicinity of Valdosta, GA. A one degree error exists in the airway description and this action corrects that error.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW.,

Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of Jet Route J-89 located in Valdosta, GA (58 FR 26265). A one degree error exists in the airway description and this action corrects the error.

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. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations corrects a one degree error discovered in the route alignment in the description of Jet Route J-89 located in Valdosta, GA.

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 "major rule" under Executive Order 12291; (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 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

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

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

§ 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 2004 Jet Routes.

* * * * *

J-89 [Revised]

From INT of Taylor, FL, 176° and Valdosta, GA 156° radials; Valdosta; Atlanta, GA; Louisville, KY; Boiler, IN; Northbrook, IL; Badger, WI; Duluth, MN; to Winnipeg, MB, Canada. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on August 30, 1993

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-21970 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-5]

Alteration of Jet Route J-162

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Jet Route J-162 between Ohio and West Virginia by realigning the route between the Bellaire, OH, and the Morgantown, WV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities. This action is necessary to simplify routing and make better use of the airspace in that area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-204), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:**History**

On June 10, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of J-162 in Ohio and West Virginia (56 FR 26627).

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. Except for editorial changes and the incorporation by reference, this amendment is the same as that proposed in the notice. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Jet Route J-162 located in Ohio and West Virginia. This action will realign J-162 between the Bellaire, OH, and the Morgantown, WV, VORTAC's. Realigning this jet route will enhance navigation by simplifying the routings and making better use of the airspace in that area.

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 "major rule" under Executive Order 12291; (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 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

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

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

§ 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 2004—Jet Routes.

* * * * *

J-162 [Revised]

From DRYER, OH, via Bellaire, OH; Morgantown, WV; to Martinsburg, WV.

* * * * *

Issued in Washington, DC, on August 30, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-21972 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 510 and 522****Animal Drugs, Feeds, and Related Products; Follicle Stimulating Hormone (FSH)**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by AUSA International, Inc. The NADA provides for intramuscular use of Super-OV™ (follicle stimulating hormone (FSH)(lyophilized porcine pituitary gland)) for induction of superovulation of cows that are cycling normally.

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jean E. Dobson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1697.

SUPPLEMENTARY INFORMATION: AUSA International, Inc., Rt. 8, P.O. Box 324-12, Tyler, TX 75703, filed NADA 141-014 which provides for the use of

Super-OV™ (FSH) (lyophilized porcine pituitary gland) for intramuscular use for induction of superovulation in cows for procedures requiring the production of multiple ova at a single estrus. The NADA is approved as of August 13, 1993, and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. The agency is also combining the existing regulation for another FSH product which is already codified at § 522.1822 *Follicle stimulating hormone-pituitary for injection*. Accordingly § 522.1822 (21 CFR 522.1822) is redesignated as § 522.1002 and revised editorially to reflect the current format.

In addition, AUSA International, Inc., had not previously been listed in as a sponsor of an approved application. Accordingly, § 510.600 (c)(1) and (c)(2) (21 CFR 510.600 (c)(1) and (c)(2)) are amended to add entries for the firm.

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

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning August 13, 1993, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to approval and conducted or sponsored by the applicant.

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

List of Subjects**21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Ausa International, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "059521" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

Firm name and address	Drug labeler code
* * * * *	(c) * * *
(1) * * *	
* * * * *	
Ausa International, Inc., Rt. 8, P.O. Box 324-12, Tyler, TX 75703	059521

(2) * * *

Drug labeler code	Firm name and address
059521	Ausa International, Inc., Rt. 8, P.O. Box 324-12, Tyler, TX 75703

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1002 [Redesignated from § 522.1822]

4. Section 522.1822 is redesignated as § 522.1002 and revised to read as follows:

§ 522.1002 Follicle stimulating hormone.

(a)(1) *Specifications.* Each package contains 2 vials. One vial contains dry, powdered, porcine pituitary gland

equivalent to 75 units (NIH-FSH-S1) of follicle stimulating hormone. The other vial contains 10 milliliters of aqueous diluent.

(2) *Sponsor.* See 059521 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) *Dosage.* 12.5 units of follicle stimulating hormone twice a day for 3 days (a total of 75 units). To effect regression of the corpus luteum, prostaglandin should be given with the 5th dose.

(ii) *Indications for use.* For induction of superovulation in cows for procedures requiring the production of multiple ova at a single estrus.

(iii) *Limitations.* For intramuscular use in cows that are not pregnant and have a normal corpus luteum. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b)(1) *Specifications.* The drug is a lyophilized pituitary extract material. Each 10-milliliter vial contains an amount equivalent to 50 milligrams of standard porcine follicle stimulating hormone and is reconstituted for use by addition of 10 milliliters of 0.9 percent aqueous sodium chloride solution.

(2) *Sponsor.* See 000061 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) *Dosage.* Cattle and horses, 10-50 milligrams; sheep and swine, 5-25 milligrams; dogs, 5-15 milligrams.

(ii) *Indications for use.* The drug is used as a supplemental source of follicle stimulating hormone where there is a general deficiency in cattle, horses, sheep, swine, and dogs.

(iii) *Limitations.* Administer intramuscularly, subcutaneously, or intravenously. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 1, 1993.
Richard H. Teske,
Acting Director, Center for Veterinary Medicine.
[FR Doc. 93-21883 Filed 9-8-93; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 25 and 201

[Docket No. R-93-1694; FR-3326-F-01]

RIN 2502-AF80

Title I Property Improvement and Manufactured Home Loans—Debt Collection Requirements; and Technical Amendment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Title I property improvement and manufactured loan program regulations by adding provisions relating to collection of debts owed to the Department under the Title I program by both lenders and defaulted borrowers. This rule also makes a technical amendment to the regulations to reflect the redesignation of certain report requirements that was inadvertently omitted from a previously published final rule.

EFFECTIVE DATE: October 12, 1993.
FOR FURTHER INFORMATION CONTACT: Paulette Porché, Director, Title I Accounting and Servicing Division, room 3136, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708-5949. Hearing or speech-impaired individuals may call HUD's TDD number, which is (202) 708-1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:
Title I Debt Collection Requirements—24 CFR Part 201, Subpart G

On January 29, 1991 (56 FR 3302), the Department published a proposed rule to amend 24 CFR parts 200, 201, and 202 with regard to the insurance of lenders against losses arising out of property improvement and manufactured home loans (Title I loans). The January 29, 1991 rule proposed to add a new subpart G for part 201, which would relate to the collection of debts owed to the Department under the Title I program by both lenders and defaulted borrowers. Public comments on the proposed rule were solicited, and the Department received comments from more than 200 respondents. However, none of the comments addressed subpart G.

On October 18, 1991 (56 FR 52414), the Department published its final rule amending parts 200, 201, and 202 with regard to Title I loans. New subpart G was not included in the final rule. As noted in the preamble to the final rule, publication of subpart G was deferred pending a ruling from the Comptroller General of the United States.

The Comptroller General was asked to rule on two major facets of the Title I debt collection process: (1) Whether it is proper for the Department to use the greater of the sale price or the appraised value of the repossessed manufactured home to calculate the initial debt owed by a borrower to the Department in connection with a defaulted manufactured home loan; and (2) whether it is proper for the Department of assess interest on Title I debt at the lesser of the note rate or the Treasury rate in effect when the underlying Title I insurance claim is paid to the lender. In an opinion issued on July 7, 1992 (71 Comp. Gen. 449), the Comptroller General concluded that the Department's methods of calculating debts and assessing interest are authorized by law.

Subpart G of part 201 consists of §§ 201.60 through 201.63. This new subpart codifies existing Title I debt collection practice and procedures and is applicable to debts owed to the Department by defaulted borrowers, as well as debts owed to the Department by Title I lenders arising from repurchase demands and unpaid insurance charges.

Section 201.60 is a statement of applicability of subpart G. Section 201.61 states how the principal amount of a debt owed by a defaulted borrower—usually referred to as the "legal debt"—is calculated. Section 201.62 relates to the assessment of interest, penalties, and administrative costs in connection with the debt. Section 201.63 relates to claims against Title I lenders for repurchases of claims and unpaid insurance premiums.

Except for minor editorial changes, subpart G is the same as set forth in the proposed rule.

24 CFR Part 25

On December 8, 1992 (57 FR 58326), the Department published a final rule which implemented a comprehensive revision of the Department's regulations that prescribe the standards by which mortgagees are approved to participate in the HUD mortgage insurance programs, and by which approved mortgagees maintain their approval status.

In this comprehensive revision, the mortgagee approval regulations that were contained in 24 CFR part 203 were

transferred to new subpart B of part 202 and assigned a new regulatory designation (see the redesignation chart set forth in proposed rule at 56 FR 29105). One of the regulatory sections transferred from 24 CFR part 203 to 24 CFR part 202, subpart B was § 203.8 entitled "Report Requirements." Section 203.8 was redesignated new § 202.19.

In making a number of conforming amendments to reflect the new regulatory designations (see final rule at 57 FR 58334 and 58 FR 58337), the Department inadvertently failed to amend 24 CFR 25.9(x), which makes reference to § 203.8, to reflect the redesignation of § 203.8 to § 202.19. This final rule makes this amendment.

Other Matters

Environmental Impact

This rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 by 24 CFR 50.20(k) because it relates to internal administrative procedures involving fiscal functions.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), 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. The rule merely codifies existing policies relating to the collection of debts owed to the Department under the Title I property improvement and manufactured home loan program by both lenders and defaulted borrowers, and makes a conforming amendment to 24 CFR part 25. Thus, with respect to 24 CFR part 201, the rule is limited to implementing debt collection activities where legal obligations already have been incurred.

With respect to 24 CFR part 25, this rule simply makes a technical amendment.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule relates to obligations of lenders and borrowers, and does not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1454 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24412) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:
14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;
14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures;
14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 201

Health facilities, Historic preservation, Home improvement,

Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority section for part 25 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

2. In § 25.9, paragraph (x) is revised to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(x) Failure to submit a report required under 24 CFR 202.19 within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the timeframe agreed upon by the Commissioner may result in initial sanctions under 24 CFR 25.5(a) through (c). Failure to take the action required under the initial sanction may result in an action under 24 CFR 25.5(d).

* * * * *

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

4. A new subpart G is added to part 201 to read as follows:

Subpart G—Debts Owed to the United States Under Title I

Sec.

201.60 General.

201.61 Claims against debtors—principal amount of debt.

201.62 Claims against debtors—interest, penalties, and administrative costs.

201.63 Claims against lenders.

Subpart G—Debts Owed to the United States Under Title I

§ 201.60 General.

(a) *Applicability.* The provisions in this subpart apply to the collection of debts owed to the United States arising out of the Title I program. These debts include, but are not limited to:

- (1) Amounts owed on loans assigned to the United States by insured lenders as the result of defaults by borrowers;
- (2) Unpaid insurance charges owed by lenders; and
- (3) Unpaid obligations of lenders arising from repurchase demands.

(b) *Departmental debt collection regulations.* Except as modified by this subpart, collection of debts arising out of the Title I program is subject to the Department's debt collection regulations in subpart C of 24 CFR part 17.

§ 201.61 Claims against debtors—principal amount of debt.

(a) *Liability.* A debtor is liable to the Secretary for the principal amount of the debt, as described in paragraphs (b), (c), or (d) of this section, as appropriate.

(b) *Property improvement notes.* In the case of an assigned note for a property improvement loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(a)(1) of this part, plus amounts described in §§ 201.55(a)(3), (4), (5).

(c) *Manufactured home notes.* In the case of an assigned note for a manufactured home loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(b)(1) of this part, plus amounts described in §§ 201.55(b)(3) through (8).

(d) *Assigned judgments.* In the case of a judgment obtained by the lender on a property improvement loan or a manufactured home loan and assigned to the Secretary, the principal amount of the debt is the amount of the judgment.

§ 201.62 Claims against debtors—interest, penalties, and administrative costs.

(a) *Interest.* In addition to the principal amount of the debt, the debtor is liable for the payment of interest. Interest accrues on the principal amount of the debt as of the date of default, as defined in § 201.2(h) of this part, as follows:

(1) In the case of a debt based upon the assignment of a defaulted note, interest is assessed at the lesser of the rate specified in the note or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(2) In the case of a debt based upon the assignment of a judgment, interest is assessed at the lesser of the rate specified in the judgment or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(b) *Penalties and administrative costs.* The Secretary shall assess reasonable administrative costs and penalties as authorized in 31 U.S.C. 3717, unless there is no provision in the note providing for such charges and the debtor has not otherwise consented to liability for such charges.

§ 201.63 Claims against lenders.

Claims against lenders for money owed to the Department, including unpaid insurance charges and unpaid repurchase demands, shall be collected in accordance with 24 CFR part 17, subpart C.

Dated: August 23, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93-21750 Filed 9-8-93; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL76-1-5908; FRL-4702-1]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: U.S. EPA is approving the State Implementation Plan (SIP) revision request submitted by the State of Illinois on June 2, 1993, for the purpose of implementing an emission statement program for stationary sources within the Chicago and St. Louis (Illinois' portion) ozone nonattainment areas. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for Illinois.

EFFECTIVE DATE: This action will be effective November 8, 1993 unless notice is received by October 12, 1993 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR-18J), Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Hattie Geisler, Regulation Development Section (AR-18), Regulation Development Branch, U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3199. Anyone wishing to come to Region 5 offices should contact Hattie Geisler first.

A copy of today's revision to the Illinois SIP is available for inspection at: Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC. 20460.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On October 12, 1992, and June 2, 1993, the Illinois Environmental Protection Agency (IEPA) submitted to the U.S. EPA rules requiring emission statements (annual emission reports), codified as title 35 of the Illinois Administrative Code part 254 (35 IAC part 254). This submittal addresses the emission statement requirements which are found at section 182(a)(3)(B) of the Clean Air Act (Act), as amended (1990 Amendments).

Section 182(a)(3)(B) of the Act States that, within 2 years after the enactment of the 1990 amendments, by November 15, 1992, States with ozone nonattainment areas (classified as marginal or worse) must submit revisions to their SIPs to require the owners or operators of stationary sources of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) to provide the States with statements, in a form acceptable to the U.S. EPA, showing actual emissions of NO_x and/or VOC from the sources. The first emission statements must be submitted to the States within 3 years of the enactment of the 1990 amendments by November 15, 1993. Subsequent statements are to be submitted annually thereafter. These statements must contain certifications of accuracy.

Section 182(a)(3)(B)(ii) of the Act specifies that the States may waive the emission statement requirements for any class or category of sources which emit less than 25 tons per year if the States, through the submission of base year emission inventories or periodic emission inventories (required to be submitted to the U.S. EPA every three years), provide for the reporting of the emissions from the exempted source classes or categories and if the reported emissions are determined using emission factors acceptable to the U.S. EPA.

II. Analysis of State Submittal

The criteria used to review the submitted SIP revisions are found in U.S. EPA's draft Guidance on the Implementation of an Emission Statement Program, (July 1992). It should be noted that this guideline has

not been finalized, but does provide the best available guidance on the expected contents of emission statements and on the States' use of emission statements. Further revisions to this draft guidance were not available prior to final rulemaking on the Illinois SIP revision. Therefore, it is appropriate to use the July 1992 draft guidance in considering Illinois' current emission statement SIP revision submittals.

The July 1992 draft guidance describes the following requirements for emission statement SIP revisions:

1. Regardless of what minimum emission reporting level is established, if either VOC or NO_x is emitted at or above the established minimum reporting level, the emissions of both VOC and NO_x should be reported;

2. The emission statements should, at minimum, include the following information (specific data elements for each information category are discussed in the draft guidelines):

- a. Certification of data accuracy;
 - b. Source identification information;
 - c. Source operating schedules;
 - d. Emissions information, including both annual and typical ozone season daily emissions;
 - e. Control equipment information;
- and,
- f. Process data.

3. States must incorporate the emission statement data into an annual point source emissions report to be submitted to the U.S. EPA by July 1st of each year beginning in 1993;

4. In addition to the submittal of emission statements and the annual point source emissions report, the U.S. EPA is also requesting that States submit an Emissions Statement Status Report (ESSR) beginning by July 1, 1993. The ESSR is to be submitted quarterly each year until all applicable sources have submitted emission statements. The ESSR should individually list the source facilities that are delinquent in submitting emission statements. The ESSR should also include the total annual and typical ozone season day emissions from all source facilities submitting emission statements prior to the ESSR submittal;

5. States are required to use the data collected through the emission statement program to annually update the facility-specific data contained in the Aerometric Information Retrieval System (AIRS) by July 1st of each year;

6. States must commit to retain emission statement data and submittals for a period of at least 3 years; and,

7. Emission statement regulations developed by the States must be federally enforceable.

Illinois' submittal contains the adopted regulations that will establish the applicability of the regulations, the schedule for the submittal of emission statements, and the data to be included in emission statements. The submittal also includes evidence that at the time of the submittal, the State had held public hearings on the regulations.

As noted above, the emission statement regulations submitted on June 2, 1993, are codified at 35 IAC Part 254. The provisions of the regulations are outlined as follows:

Applicability

The applicability of the regulations is divided among three source subcategories. Subpart B of the regulations applies to the owner or operator of any source required to have an operating permit in accordance with 35 IAC Part 201 and that is permitted to emit 25 tons per year or more of any combination of regulated air pollutants. Subpart B of the regulations also applies to the owner or operator of any source required to have an operating permit in accordance with Section 39.5 of the Environmental Protection Act, the State's authorization of a permit program intended to satisfy the requirements of title V of the Act.

Subpart C of the regulations, which is meant to comply with U.S. EPA's emission statement guidelines, applies to the owner or operator of any source that has a potential to emit 25 tons per year or more of either VOC (defined to be Volatile Organic Material (VOM) in the State's regulations) or NO_x for all emission units at the source and which is located in any ozone nonattainment area in the State.

Subpart D of the regulations applies to the owner or operator of any source of regulated pollutants required to have an operating permit in accordance with 35 IAC Part 201 and which is not subject to Subpart B or C of the regulations.

Definitions

The emission statement regulations define a number of terms necessary to specify the applicability and requirements of the regulations. Some terms of special note are presented below.

Certifying individual is defined to be the individual responsible for the certification of the accuracy of the Annual Emissions Report (emissions statement) and who will take legal responsibility for the information reported in the emission statement.

Peak ozone season is defined to mean the months of June through August. "Typical ozone season day" is defined to mean any day, Monday through

Friday, representative of source operations during the peak ozone season.

Minimum Contents of Annual Emission Reports

At a minimum, regardless of which subpart of the regulations applies, the annual emission reports required from applicable sources must contain:

- a. Source identification information including: (1) The source name, physical location, and mailing address; (2) the source's Standard Industrial Classification (SIC) code; (3) a source contact name; and (4) the telephone number of the source contact;
- b. Source-wide totals of actual emissions for all regulated air pollutants emitted by the source; and,
- c. A regulation specified data accuracy certification statement along with the full name, title, actual signature, date of signature, and telephone number of the certifying individual.

The minimum annual emission reports must be filed in paper form.

Failure to File Complete Emission Reports

Failure to file complete annual emission reports required by Subparts B, C, and D of the regulations shall be considered to be a violation of 35 IAC Part 201.302(a).

Additional Requirements Common to All Annual Emission Reports

a. If, after submitting an annual emissions report, the owner or operator of the source discovers an error in the data reported, the owner or operator must notify the IEPA of the error in writing. This error notification must be submitted to the IEPA within 30 days of the discovery of the error.

b. All records and calculations upon which the verified and reported data are based must be retained by the source for a minimum of 3 years following the filing of the annual emissions report.

c. The owner or operator of a source may submit additional data (beyond the data requirements of Subparts B, C, and D) on a voluntary basis. The State, however, may not require any additional monitoring which is not otherwise required by other applicable regulations or by permit conditions.

Requirements for Large Sources—Subpart B Requirements

a. At least 90 days prior to a source's deadline for filing an annual emissions report, the IEPA will provide the source with a Source Inventory Report and an Inventory Edit Summary. The Source Inventory Summary will contain all of

the data fields required under the emission statement regulation. Where data have been previously provided, the IEPA will provide the data to the source for verification and update or correction. The information provided in the annual emissions report shall be based on the best information available to the owner or operator of the source.

b. Reporting Schedule

i. The first annual emissions report filed for all sources covered by Subpart B of the regulations shall be for the calendar year following the year in which the U.S. EPA approves the State's permit program pursuant to Title V of the Act. Once the State's permit program is approved, the annual emissions report must be filed with the IEPA each calendar year by May 1.

ii. Commencing with calendar year 1992, all sources subject to the applicability requirements of Subpart B of the regulations must file an annual emissions report pursuant to Subpart D of the regulation (discussed below). This must be done until such time as the source is required to file the first full annual emissions report required under i. above.

c. Contents of Subpart B Annual Emissions Reports

The information required in a Subpart B annual emissions report shall be requested by the IEPA and will include the information required in the applications for permits or permit renewals, including source identification, emissions information, operating data, control device information, and exhaust point information for each regulated air pollutant emitted by the source. This information must be provided for each emission unit or operation if such detail is required in the application for permits or permit renewals.

Requirements for VOC or NO_x Sources In Ozone Nonattainment Areas—Subpart C Requirements

a. Commencing with calendar year 1992, the owner or operator of any source subject to the Subpart C applicability requirements shall submit an annual emissions report to the IEPA including the information discussed below. If a source has a total potential to emit 25 tons per year or more of either VOC or NO_x for all emission units, the owner or operator of the source must provide the required information for both VOC and NO_x. For all regulated air pollutants emitted by the source except VOC and NO_x, the owner or operator must submit the minimum information discussed above.

b. At least 90 days prior to the source's deadline for filing the annual emissions report, the IEPA will provide the source with a Source Inventory Report containing all of the data fields for the information required. If the information requested in the data fields has been previously provided by the source, the IEPA will provide this data in the Source Inventory Report for verification and update by the owner or operator. The information on emissions shall be based on the best information available to the owner or operator.

Reporting Schedule

The filing deadline for calendar year 1992 is October 1, 1993. Annual emission reports will be due by May 1 of each subsequent year.

Contents of Subpart C Annual Emissions Reports

The annual emissions reports must contain the following information:

- a. All information required for the minimum reporting requirements discussed above;
- b. Emissions information for each emission unit producing or capable of producing either VOC or NO_x emissions including:
 - i. Annual actual emissions of VOC and/or NO_x;
 - ii. Actual VOC and/or NO_x emissions for the typical ozone season day;
 - iii. Startup, shutdown, and malfunction emissions of VOC and/or NO_x;
 - iv. Emission determination methods for each of the actual emission figures reported; and,
 - v. Emission factors;
- c. Operating data for each emission unit including:
 - i. Percent annual throughput by season;
 - ii. Annual process rate;
 - iii. Peak ozone season daily process rate;
 - iv. Fuel usage data;
 - v. Physical characteristics of tanks;
 - vi. Tank data;
 - vii. Number of hours of operation per day for a normal operating schedule and for a typical ozone season day (if different from the normal operating schedule);
 - viii. Number of days of operation per week on the normal operating schedule and during the peak ozone season (if different from the normal operating schedule); and,
 - ix. Total actual hours of operation for the reporting year.
- d. Control device information including:
 - i. Description of control methods;
 - ii. Percent capture efficiencies; and,

iii. Current control efficiencies in percent for VOC and/or NO_x; and,

e. Exhaust point parameters including:

- i. Heights;
- ii. Diameters;
- iii. Flow rates; and,
- iv. Exit temperatures.

Transition to Full Reporting by Subpart C Large Sources

Sources subject to Subpart C and which also satisfy the applicability requirements for Subpart B shall make the transition to full reporting for all regulated pollutants for Subpart B. The first annual emissions report for all regulated pollutants shall be for the calendar year following the year in which the U.S. EPA approves Illinois' permit program pursuant to title V of the Act.

Sources which are subject to Subpart C of the regulations, but which do not meet the applicability requirements of Subpart B shall not make the transition to full reporting, but shall continue to file annual emissions reports meeting the requirements of Subpart C of the regulations.

Reporting Requirements for Small Sources—Subpart D

At least 90 days prior to a source's deadline for filing an annual emissions report, the IEPA shall provide the source with a Source Inventory Report and an Inventory Edit Summary. The Source Inventory Report shall contain all data fields required under the emission statement regulation. If the information requested in the data fields has previously been provided by the source, the IEPA shall provide these data in the Source Inventory Report for verification and update by source owner or operator. The information provided by the source owner or operator must be based on the best information available.

Reporting Schedule

The first annual emissions report submitted pursuant to Subpart D shall be for the calendar year 1992 and shall be due by October 1, 1993. Thereafter, the annual emissions reports shall be filed with the IEPA by May 1 of subsequent years.

Contents

The annual emissions reports shall contain the information required for minimum reporting discussed above.

III. Rulemaking Action

IEPA's adopted annual emissions reporting regulations submitted on June 2, 1993, are acceptable under U.S. EPA's draft guidelines.

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 8, 1993.

However, if we receive notice by October 12, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

This has been classified as a Table 2 action by the Regional Administrator under procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

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

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

246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Act, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Volatile organic compounds.

Dated: August 20, 1993.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, chapter I, title I, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(7) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *
(97) On October 12, 1992, and June 2, 1993, the State of Illinois submitted a requested revision to the Illinois State Implementation Plan (SIP) intended to satisfy the requirements of section 182(a)(3)(B) of the Clean Air Act as amended in 1990. Included were State rules establishing procedures for the annual reporting of emissions of volatile organic material (VOM) and oxides of nitrogen (NO_x) as well as other regulated air pollutants by stationary sources in ozone nonattainment areas. Also included was a June 2, 1993, commitment letter from the Illinois Environmental Protection Agency (IEPA) to fulfill the reporting requirements of the United States Environmental Protection Agency by performing the following tasks:

(i) Update the AIRS Facility Subsystem using the annual emissions

report data. The 1992 data will be updated by December 31, 1993, and subsequent updates will be made by July 1st of each year.

(ii) Retain annual emissions reports for at least three (3) years.

(iii) Develop and submit Emissions Statement Status Reports (ESSR) on a quarterly basis each year until all applicable sources have submitted the required annual emissions reports. The report will show the total number of facilities from which emission statement data was requested, the number of facilities that met the provisions, and the number of facilities that failed to meet the provisions. Sources that are delinquent in submitting their emissions statements will be individually listed if they emit 500 tons per year or more of VOM or 2500 tons per year or more of NO_x. The report will also contain the emission data requested in Appendix F of the July 6, 1992 Draft Guidance on the Implementation of an Emission Statement Program.

(iv) All sources subject to the emission statement requirements must report, at a minimum, the information specified under subpart C of part 254 of chapter II of subtitle B of title 35 of the Illinois Administrative Code.

(A) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 254: Annual Emissions Report, adopted at 17 Illinois Register 7782, effective May 14, 1993.

(B) Other material. June 2, 1993, commitment letter.

[FR Doc. 93-21924 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[NM-12-1-5872; FRL-4700-6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan; Addressing PM-10 for Anthony

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) addressing PM-10 for Anthony (a moderate nonattainment area for PM-10), including a request from the State, per section 188(f) of the amended Clean Air Act (CAA), for a waiver of the attainment date for Anthony. The EPA may grant such a waiver for a moderate

PM-10 nonattainment area where the EPA determines that anthropogenic sources do not contribute significantly to violations of the PM-10 National Ambient Air Quality Standards (NAAQS) in the area. PM-10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

EFFECTIVE DATE: This action will become effective on October 12, 1993.

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

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

Mr. Jerry Kurtzweg (ANR-443), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 655-7258.

SUPPLEMENTARY INFORMATION:

I. Background

Anthony, New Mexico (located in Dona Ana County, New Mexico), was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.¹ Please reference 56 Federal Register (FR) 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the CAA.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA

intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

Those moderate PM-10 nonattainment areas designated nonattainment under section 107(d)(4) of the CAA were to submit SIPs to the EPA by November 15, 1991. The CAA outlined certain required items to be included in the SIPs. These required items, due November 15, 1991, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM-10 in the nonattainment area (section 172(c)(3) of the CAA); (2) a permit program to be submitted by June 30, 1992, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of PM-10 (section 189(a)(1)(A)); (3) a demonstration (including air quality modeling) that the plan provides for attainment of the PM-10 NAAQS as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B)); (4) provisions to assure that Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), for control of PM-10 will be implemented no later than December 10, 1993 (sections 172(c)(1) and 189(a)(1)(C)). For sources emitting insignificant (de minimis) quantities of PM-10, the EPA's policy is that it would be unreasonable and would not constitute RACM to require controls on the source (please reference 57 FR 13540). Also, when evaluating RACM and RACT, technological and economic feasibility determinations are to be conducted (57 FR 13540-44); (5) quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attaining the PM-10 NAAQS (section 189(c)); (6) contingency measures due November 15, 1993 (please reference 57 FR 13543), that are to be implemented if the EPA determines that the area has failed to make RFP or to attain the primary standards by the applicable date (section 172(c)(9)); and (7) control requirements for major stationary sources of PM-10 precursors, unless the EPA determines inappropriate. The

¹ The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM-10 National Ambient Air Quality Standards (see Pub. L. No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 et seq.

CAA, in section 189(e), states that control requirements applicable to major stationary sources of PM-10 will also be applicable to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM-10 levels that exceed the PM-10 ambient standards in the area.

II. Response to Comments

The EPA received no comments on its April 8, 1993 (58 FR 18190-18197), Federal Register proposal to approve the Anthony moderate nonattainment area PM-10 SIP, including the waiver request.

Final Action

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565-66). In this final action, the EPA is granting approval of the Anthony, New Mexico, moderate nonattainment area PM-10 SIP, including the waiver of the moderate area attainment date for Anthony, because it meets all of the applicable requirements of the CAA.

This SIP revision was submitted to the EPA by cover letter from the Governor dated November 8, 1991. On April 8, 1993, the EPA announced its proposed approval of the moderate nonattainment area PM-10 SIP for Anthony, New Mexico, including the waiver of the attainment date for Anthony (58 FR 18190-18197). In that rulemaking action, the EPA described in detail its interpretations of Title I and its rationale for proposing to approve the Anthony PM-10 SIP, including the waiver request, taking into consideration the specific factual issues presented.

The EPA requested public comments on all aspects of the proposal (please reference 58 FR 18196), and no comments were received during the comment period, which ended on May 10, 1993. This final action on the Anthony PM-10 SIP, including the waiver request, is unchanged from the April 8, 1993, proposed approval action. The discussion herein provides only a broad overview of the proposed action the EPA is now finalizing. The public is referred to the April 8, 1993, proposed approval FR action for a full discussion of the action the EPA is now finalizing.

The EPA finds that the State of New Mexico's PM-10 SIP for the Anthony nonattainment area meets the RACM/RACM requirement. The EPA views the State's open burning regulation (Air Quality Control Regulation (AQCR) 301), previously approved by the EPA, as reasonable, enforceable, and

responsible for maintaining the PM-10 emissions from trash burning at lower than de minimis levels. The EPA is approving the revised AQCR 301 to include the definition of "open burning" in order to strengthen the New Mexico SIP. Remaining anthropogenic sources as a whole are de minimis and RACM (including RACT) does not require the implementation of further controls. The EPA is also approving Dona Ana County's commitment to implementing and enforcing all Dona Ana County rules, regulations, policies and practices, including those identified in the PM-10 SIP which reduce airborne dust in the Anthony area (October 29, 1991, letter from the County to the State). These commitments regarding County control measures are being approved as measures beyond RACM which serve to strengthen the New Mexico (Anthony PM-10) SIP. The State of New Mexico also stated in the adopted Anthony PM-10 SIP (page 10) that it "remains committed to the dust control measures implemented by Dona Ana County," as well as to the "moderate area control strategies as agreed to in [the] SIP submittal and to the established air quality monitoring schedule." The State ratified its commitment in a November 21, 1991, letter from Cecilia Williams, Chief, Air Quality Bureau, to Gerald Pontenot, Chief, Air Programs Branch, EPA Region 6. The EPA is approving the State's commitment found in the Anthony SIP and in the November 21, 1991, letter. The overwhelmingly dominant sources of PM-10 concentrations in the Anthony area are nonanthropogenic emissions from the surrounding desert and residual nonanthropogenic emissions from surrounding rangelands which are not feasibly controllable.

Anthropogenic sources as a whole, after the implementation of reasonable controls, do not contribute significantly to violation of the PM-10 NAAQS in the Anthony nonattainment area. Therefore, the EPA is granting the State's request to waive the moderate area attainment date for Anthony pursuant to section 188(f) of the CAA. This final action on the State's attainment date waiver request is non-precedent setting, and the decision to grant a waiver is based on a current reading of the law and on facts specific to the Anthony, New Mexico nonattainment area. As the EPA refines its policy concerning waivers, areas may face different procedural and substantive showings under section 188(f).

The EPA is also granting the Anthony PM-10 nonattainment area the exclusion from PM-10 precursor control requirements authorized under section

189(e) of the CAA. Finally, to satisfy section 189(c) of the CAA (regarding quantitative milestones and RFP), the State of New Mexico must report to the EPA every three years, beginning on November 15, 1994, the following information regarding the Anthony nonattainment area:

(1) The status and effectiveness of the existing controls;

(2) Significant changes in the inventory due to new source growth or other activities; and

(3) An evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment.

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

This action makes final the action proposed at 58 FR 18190. As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

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

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

U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the *Federal Register* on July 1, 1982.

Dated: August 23, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(50) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(50) A revision to the New Mexico State Implementation Plan (SIP) addressing moderate PM-10 nonattainment area requirements for Anthony was submitted by the Governor of New Mexico by letter dated November 8, 1991. The SIP revision included, as per section 188(f) of the Clean Air Act, a request for a waiver of the attainment date for Anthony.

(i) Incorporation by reference.

(A) Revision to New Mexico Air Quality Control Regulation 301—*Regulation to Control Open Burning*, section I (definition of "open burning"), as filed with the State Records and Archives Center on February 7, 1983.

(ii) Additional material.

(A) November 8, 1991, narrative plan addressing the Anthony moderate PM-10 nonattainment area, including emission inventory, modeling analyses, and control measures.

(B) A letter dated October 29, 1991, from Judith M. Price, Dona Ana County Planning Director and Assistant County Manager, to Judith M. Espinosa, Secretary of the New Mexico Environment Department, in which the County committed to implement and enforce all Dona Ana County rules, regulations, policies and practices, including those identified in the draft PM-10 SIP which reduce airborne dust in the Anthony area. The Dona Ana County rules, regulations, policies and practices identified in the draft Anthony PM-10 SIP are identical to those identified in the final Anthony PM-10 SIP.

(C) A letter dated November 21, 1991, from Cecilia Williams, Chief, New Mexico Air Quality Bureau, to Gerald Fontenot, Chief, Air Programs Branch, EPA Region 6, expressing satisfaction with the October 29, 1991, commitment letter from Judith Price to Judith Espinosa.

(D) Anthony PM-10 SIP narrative from page 10 that reads as follows: "The State remains committed to the dust control measures implemented by Dona Ana County, moderate area control strategies as agreed to in this SIP submittal and to the established air quality monitoring schedule."

[FR Doc. 93-21921 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[OR-22-1-5635; FRL-4150-2]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, Environmental Protection Agency (EPA) approves numerous amendments to the Lane Regional Air Pollution Authority's (LRAPA) rules for the control of air pollution in Lane County, Oregon as revisions to the Oregon state implementation plan (SIP). These revisions were submitted by the Director of the Oregon Department of Environmental Quality (ODEQ) on May 30, 1986; December 5, 1986; May 8, 1987; March 3, 1989; March 12, 1990; June 8, 1990; and November 15, 1991 in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). In accordance with Oregon statutes, LRAPA rules must be at least as stringent as the ODEQ statewide rules.

EFFECTIVE DATE: This action will be effective on November 8, 1993 unless notice is received by October 12, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Air & Radiation Branch, Environmental Protection Agency, Docket #OR22-1-5635, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-4253.

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 1986 the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a completely revised and updated implementation plan for the State of Oregon. Included in this updated plan were then current rules for the Lane Regional Air Pollution Authority (LRAPA). Further revisions to the LRAPA rules were submitted by the Director of the ODEQ on December 5,

1986; May 8, 1987; March 3, 1989; March 12, 1990; June 8, 1990; and November 15, 1991. On July 30, 1991 (56 FR 36006), EPA approved most of the May 30, 1986 updated SIP. However, EPA did not take action on the LRAPA rules at that time, since there were subsequent revisions to the LRAPA rules which needed to be evaluated and acted upon. In this rulemaking, EPA is taking final action on all seven of the submitted revisions to the LRAPA rules.

II. Description of Plan Revisions

The LRAPA rules submitted on May 30, 1986 were essentially those rules in effect as of September 10, 1985. This rulemaking action includes revisions to the following Titles of the EPA-approved LRAPA rules: Title 11 Policy and General Provisions; Title 12 General Duties and Powers of Board and Director; Title 13 Enforcement Procedures; Title 31 Ambient Air Standards; Title 32 Emission Standards; and Title 33 Prohibited Practices and Control of Special Classes. It included the addition of the following new Titles: Title 14 Definitions; Title 34 Air Contaminant Discharge Permits; Title 38 New Source Review; and Title 47 Rules for Open Outdoor Burning. It also included the rescission of Title 21 Registration, Reports and Test Procedures; Title 22 Permits; and Title 36 Rules for Open Outdoor Burning. Finally, it requested the removal from the SIP of Title 20 Indirect Sources; Title 42 Rules of Practice and Procedure—Hearing Procedure; Title 44 Rules of Practice and Procedure—Evidence; and Title 45 Rules of Practice and Procedure—Decision and Appeal.

The December 5, 1986 submittal included revisions to Title 14 Definitions and Title 38 New Source Review to implement revised EPA regulations regarding creditable stack heights.

The May 8, 1987 submittal included revisions to Title 34 Air Contaminant Discharge Permits which updated the table of air contaminant sources and associated fee schedule.

The March 3, 1989 submittal included revisions to the following Titles: Title 14 Definitions; Title 34 Air Contaminant Discharge Permits; Title 38 New Source Review; and Title 51 Air Pollution Emergencies. It also revised and repromulgated Title 31 as Title 50 Ambient Air Standards. These revisions were made to implement EPA's revised ambient air quality standard for particulate matter and to update the table of air contaminant sources as associated fee schedule.

The March 12, 1990 submittal included further revisions to Title 34 Air Contaminant Discharge Permits.

The June 8, 1990 submittal revised and repromulgated Title 13 Enforcement Procedures as Title 15 Enforcement Procedure and Civil Penalties.

The November 15, 1991 submittal included a new Title 12 Definitions; further revisions to Title 34 Air Contaminant Discharge Permits and Title 38 New Source Review; and resubmittals of Title 50 Ambient Air Standards and Title 51 Air Pollution Emergencies (previously submitted on March 3, 1989). These rules were submitted as supporting provisions for the control strategy for the Eugene-Springfield PM₁₀ nonattainment areas.

Under Oregon statutes, rules of any local air pollution control authority must be at least as stringent as the statewide rules of the Oregon Department of Environmental Quality. Since EPA has already approved the statewide rules as meeting the requirements of the Act (July 30, 1991 (56 FR 36006)), EPA is approving the LRAPA rules as well.

III. Summary of EPA Action

In this action, EPA approves numerous revisions to the LRAPA rules as revisions to the Oregon SIP. Specifically, EPA approves:

- (1) Revisions to Title 11, Title 12, Title 32, and Title 33; the addition of Title 14, Title 34, Title 38, and Title 47; the rescission of Title 21, Title 22, and Title 36; and the removal from the SIP of Title 20, Title 42, Title 44, and Title 45 submitted on May 31, 1986;
- (2) Revisions to Title 14 and Title 38 submitted on December 5, 1986;
- (3) Revisions to Title 34 submitted on May 8, 1987;
- (4) Revisions to Title 14, Title 34, Title 38, and Title 51 and the revised and repromulgated Title 50 (previously Title 31) submitted on March 3, 1989;
- (5) Revisions to Title 34 submitted on March 12, 1990;
- (6) The revised and repromulgated Title 15 (previously Title 13) submitted on June 8, 1990; and
- (7) The new Title 12 and revisions to Title 34 and Title 38 submitted on November 15, 1991.

Note that EPA is approving two different provisions which are both titled "Title 12" as submitted—"Title 12 General Duties and Powers of Board and Director" submitted on May 31, 1986 and "Title 12 Definitions" submitted on November 15, 1991. EPA is also approving two different Titles that cover definitions—"Title 14 Definitions" submitted on May 31, 1986, December 5, 1986, and March 3, 1989, and "Title

12 Definitions" submitted on November 15, 1991 because there was no request to replace the previously submitted Title 14 with Title 12 nor any indication that Title 14 had been rescinded from the previously adopted and submitted SIP revisions.

IV. Administrative Review

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

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

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table

2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 2 and 3 revisions. OMB has agreed to continue to temporary waiver until such time as it rules on EPA's request.

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: August 25, 1993.

Gerald A. Emison,
Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(96) On May 30, 1986, December 5, 1986, May 8, 1987, March 3, 1989, March 12, 1990, June 8, 1990, and November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air State Implementation Plan and Other State Regulations). The revisions updated the Lane Regional Air Pollution Authority rules by adding new Titles 12, 14, 34, 38, and 47; revising existing Titles 11, 12, 15 (previously Title 13), 32, 33, 50 (previously Title 31), and 51; rescinding existing Titles 21, 22, and 36; and removing existing Titles 20, 42, 44, and 45 from the EPA-approved state implementation plan.

(i) Incorporation by reference.

(A) May 30, 1986 letter from the Director of the Oregon Department of Environmental Quality (ODEQ) to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 11 (Policy and General Provisions), Title 12 (General Duties and Powers of Board and Director), Title 14 (Definitions), Title 32 (Emission Standards) and Title 33 (Prohibited Practices and Control of Special Classes), Title 34 (Air Contaminant Discharge Permits), Title 38 (New Source Review), and Title 47 (Rules for Open Outdoor Burning) as adopted by the Environmental Quality Commission on April 25, 1986 and state effective on May 8, 1986.

(B) December 5, 1986 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 14 (Definitions) and Title 38 (New Source Review) as adopted by the Environmental Quality Commission on October 24, 1986 and state effective on October 24, 1986.

(C) May 8, 1987 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 34 (Air Contaminant Discharge Permits) as adopted by the Environmental Quality Commission on April 17, 1987 and state effective on April 22, 1987.

(D) March 3, 1989 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 34 (Air Contaminant Discharge Permits), as adopted by the Environmental Quality Commission on November 4, 1988 and state effective on December 20, 1988.

(E) March 3, 1989 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 14 (Definitions), Title 31 which was revised and repromulgated as Title 50 (Ambient Air Standards), Title 38 (New Source Review), and Title 51 (Air Pollution Emergencies), as adopted by the Environmental Quality Commission on November 4, 1988 and state effective on December 20, 1988.

(F) March 12, 1990 letter from ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 34 (Air Contaminant Discharge Permits) as adopted by the Environmental Quality Commission on March 2, 1990 and state effective on February 14, 1991.

(G) June 8, 1990 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 13 (Enforcement Procedures) which was revised and repromulgated as Title 15 (Enforcement Procedures and Civil Penalties) as adopted by the Environmental Quality Commission on May 25, 1990 and state effective on February 14, 1991.

(H) November 15, 1991 letter from the Director of ODEQ to EPA Region 10 submitting amendment to the Oregon state implementation plan. Revisions were a new Title 12 (Definitions), and changes to Title 34 (Air Contaminant Discharge Permits) and Title 38 (New Source Review) as adopted by the Environmental Quality Commission on November 8, 1991 and state effective on November 13, 1991.

(I) August 26, 1993 supplemental information letter from ODEQ to EPA Region 10 assuring EPA that draft and proposed regulations submitted from Lane Regional Air Pollution Authority (LRAPA) as final versions of the rules were in fact made final with no change.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current state implementation plan.

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction (1-86)
2. General Administration (1-86)

- 2.1 Agency Organization (1-86)
 2.2 Legal Authority (1-86)
 2.3 Resources (1-86)
 2.4 Intergovernmental Cooperation and Consultation (1-86)
 2.5 Miscellaneous Provisions (1-86)
 3. Statewide Regulatory Provisions
 3.1 Oregon Administrative Rules—Chapter 340 (1-86)
- Division 12—Civil Penalties**
 Sec. 030 Definitions (11-8-84)
 Sec. 035 Consolidation of Proceedings (9-25-74)
 Sec. 040 Notice of Violation (12-3-85)
 Sec. 045 Mitigating and Aggravating Factors (11-8-84)
 Sec. 050 Air Quality Schedule of Civil Penalties (11-8-84)
 Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (9-25-74)
 Sec. 075 Compromise or Settlement of Civil Penalty by Director (11-8-84)
- Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4-15-72)**
 Sec. 005 Purpose (4-15-72)
 Sec. 007 Exceptions (6-10-88)
 Sec. 010 Definitions (4-15-72), except (3) "Director" (6-10-88)
 Sec. 015 Type, Duration, and Termination of Permits (12-16-76)
 Sec. 020 Application for a Permit (4-15-72), except (1), (4)(b), (5) (6-10-88)
 Sec. 025 Issuance of a Permit (4-15-72), except (2), (3), (4), (5), (6) (6-10-88)
 Sec. 030 Renewal of a Permit (4-15-72)
 Sec. 035 Denial of a Permit (4-15-72)
 Sec. 040 Modification of a Permit (4-15-72)
 Sec. 045 Suspension or Revocation of a Permit (4-15-72)
 Sec. 050 Special Permits (4-15-72)
- Division 20—General**
 Sec. 001 Highest and Best Practicable Treatment and Control Required (3-1-72)
 Sec. 003 Exceptions (3-1-72)
- Registration**
 Sec. 005 Registration in General (9-1-70)
 Sec. 010 Registration requirements (9-1-70)
 Sec. 015 Re-registration (9-1-70)
- Notice of Construction and Approval of Plans**
 Sec. 020 Requirement (9-1-70)
 Sec. 025 Scope (3-1-72)
 Sec. 030 Procedure (9-1-72), except (4)(a) Order Prohibiting Construction (4-14-89)
 Sec. 032 Compliance Schedules (3-1-72)
- Sampling, Testing, and Measurement of Air Contaminant Emissions**
 Sec. 035 Program (9-1-70)
 Sec. 037 Stack Heights & Dispersion Techniques (5-12-86)
 Sec. 040 Methods (9-11-70)
 Sec. 045 Department Testing (9-1-70)
 Sec. 046 Records; Maintaining and Reporting (10-1-72)
- Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9-30-85)
- Air Contaminant Discharge Permits**
 Sec. 140 Purpose (1-6-86)
 Sec. 145 Definitions (1-6-76)
 Sec. 150 Notice Policy (6-10-88)
 Sec. 155 Permit Required (5-31-83)
 Sec. 160 Multiple-Source Permit (1-6-76)
 Sec. 165 Fees (3-14-86)
 Sec. 170 Procedures For Obtaining Permits (1-11-74)
 Sec. 175 Other Requirements (6-29-79)
 Sec. 180 Registration Exemption (6-29-79)
 Sec. 185 Permit Program For Regional Air Pollution Authority (1-6-76)
- Conflict of Interest**
 Sec. 200 Purpose (10-13-78)
 Sec. 205 Definitions (10-13-78)
 Sec. 210 Public Interest Representation (10-13-78)
 Sec. 215 Disclosure of Potential Conflicts of Interest (10-13-78)
- New Source Review**
 Sec. 220 Applicability (9-8-81)
 Sec. 225 Definitions (10-16-84)
 Sec. 230 Procedural Requirements (10-16-84), except (3)(d) (6-10-88)
 Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9-8-81)
 Sec. 240 Requirements for Sources in Nonattainment Areas (4-18-83)
 Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10-16-85)
 Sec. 250 Exemptions (9-8-81)
 Sec. 255 Baseline for Determining Credit for Offsets (9-8-81)
 Sec. 260 Requirements for Net Air Quality Benefit (4-18-83)
 Sec. 265 Emission Reduction Credit Banking (4-18-83)
 Sec. 270 Fugitive and Secondary Emissions (9-8-81)
 Sec. 275 Repealed
 Sec. 276 Visibility Impact (10-16-85)
- Plant Site Emission Limits**
 Sec. 300 Policy (9-8-81)
 Sec. 301 Requirement for Plant Site Emission Limits (9-8-81)
 Sec. 305 Definitions (9-8-81)
 Sec. 310 Criteria for Establishing Plant Site Emission Limits (9-8-81)
 Sec. 315 Alternative Emission Controls (9-8-81)
 Sec. 320 Temporary PSD Increment Allocation (9-8-81)
- Stack Heights and Dispersion Techniques**
 Sec. 340 Definitions (4-18-83)
 Sec. 345 Limitations (4-18-83)
 Sec. 350 Purpose and Applicability (1-2-91)
 Sec. 355 Definitions (1-2-91)
 Sec. 360 Planned Startup and Shutdown (1-2-91)
 Sec. 365 Scheduled Maintenance (1-2-91)
 Sec. 370 Upsets and Breakdowns (1-2-91)
- Sec. 375 Reporting Requirements (1-2-91)
 Sec. 380 Enforcement Action Criteria (1-2-91)
- Division 21—Industrial Contingency Requirements for PM-10 Nonattainment Areas**
 Sec. 200 Purpose (11-13-91)
 Sec. 205 Relation to Other Rules (11-13-91)
 Sec. 210 Applicability (11-13-91)
 Sec. 215 Definitions (11-13-91)
 Sec. 220 Compliance Schedule for Existing Sources (11-13-91)
 Sec. 225 Wood-Waste Boilers (11-13-91)
 Sec. 230 Wood Particulate Dryers at Particleboard Plants (11-13-91)
 Sec. 235 Hardboard Manufacturing Plants (11-13-91)
 Sec. 240 Air Conveying Systems (11-13-91)
 Sec. 245 Fugitive Emissions (11-13-91)
- Division 22—General Gaseous Emissions Sulfur Content of Fuels**
 Sec. 005 Definitions (3-1-72)
 Sec. 010 Residual Fuel Oils (8-25-77)
 Sec. 015 Distillate Fuel Oils (3-1-72)
 Sec. 020 Coal (1-29-82)
 Sec. 025 Exemptions (3-1-72)
- General Emission Standards for Sulfur Dioxide**
 Sec. 050 Definitions (3-1-72)
 Sec. 055 Fuel Burning Equipment (3-1-72)
 Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6-15-89)
- Division 23—Rules for Open Burning**
 Sec. 022 How to Use These Open Burning Rules (9-8-81)
 Sec. 025 Policy (9-8-81)
 Sec. 030 Definitions (6-16-84) (15) "Disease and Pest Control" (11-13-91)
 Sec. 035 Exemptions, Statewide (6-16-84)
 Sec. 040 General Requirements Statewide (9-8-81)
 Sec. 042 General Prohibitions Statewide (6-16-84)
 Sec. 043 Open Burning Schedule (11-13-91)
 Sec. 045 County Listing of Specific Open Burning Rules (9-8-81)
 Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11-13-91)
- Open Burning Prohibitions**
 Sec. 055 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9-8-81)
 Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6-16-84)
 Sec. 065 Clackamas County (6-16-84)
 Sec. 070 Multnomah County (6-16-84)
 Sec. 075 Washington County (6-16-84)
 Sec. 080 Columbia County (9-8-81)
 Sec. 085 Lane County (6-16-84)

- Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9-8-81)
 Sec. 100 Letter Permits (6-16-84)
 Sec. 105 Forced Air Pit Incinerators (9-8-81)
 Sec. 110 Records and Reports (9-8-81)
 Sec. 115 Open Burning Control Areas (6-16-84)
- Division 24—Motor Vehicles**
- Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards**
- Sec. 300 Scope (4-1-85)
 Sec. 301 Boundary Designations (9-12-88)
 Sec. 305 Definitions (4-1-85)
 Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12-31-83)
 Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8-1-81)
 Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9-12-88)
 Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12-31-83)
 Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9-12-88)
 Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9-12-88)
 Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8-1-81) Subpart (3) (9-12-86)
 Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9-12-86)
 Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12-31-83)
 Sec. 350 Gas Analytical System Licensing Criteria (9-12-88)
- Division 25—Specific Industrial Standards Construction and Operation of Wigwam Waste Burners**
- Sec. 005 Definitions (3-1-72)
 Sec. 010 Statement of Policy (3-1-72)
 Sec. 015 Authorization to Operate a Wigwam Burner (3-1-72)
 Sec. 020 Repealed
 Sec. 025 Monitoring and Reporting (3-1-72)
- Hot Mix Asphalt Plants**
- Sec. 105 Definitions (3-1-73)
 Sec. 110 Control Facilities Required (3-1-73)
 Sec. 115 Other Established Air Quality Limitations (3-1-73)
 Sec. 120 Portable Hot Mix Asphalt Plants (4-18-83)
 Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3-1-73)
- Primary Aluminum Plants**
- Sec. 255 Statement of Purpose (6-18-82)
 Sec. 260 Definitions (6-18-82)
 Sec. 265 Emission Standards (6-18-82)
 Sec. 270 Special Problem Areas (12-25-73)
 Sec. 275 Highest and Best Practical Treatment and Control Requirement (12-25-73)
- Sec. 280 Monitoring (6-18-82)
 Sec. 285 Reporting (6-18-82)
- Specific Industrial Standards**
- Sec. 305 Definitions (11-13-91)
 Sec. 310 General Provisions (4-11-77)
 Sec. 315 Veneer and Plywood Manufacturing Operations (11-13-91)
 Sec. 320 Particleboard Manufacturing Operations (3-22-77)
 Sec. 325 Hardboard Manufacturing Operations (3-22-77)
- Regulations for Sulfite Pulp Mills**
- Sec. 350 Definitions (5-23-80)
 Sec. 355 Statement of Purpose (5-23-80)
 Sec. 360 Minimum Emission Standards (5-23-80)
 Sec. 365 Repealed
 Sec. 370 Monitoring and Reporting (5-23-80)
 Sec. 375 Repealed
 Sec. 380 Exceptions (5-23-80)
- Laterite Ore Production of Ferronickel**
- Sec. 405 Statement of Purpose (3-1-72)
 Sec. 410 Definitions (3-1-72)
 Sec. 415 Emission Standards (3-1-72)
 Sec. 420 Highest and Best Practicable Treatment and Control Required (3-1-72)
 Sec. 425 Compliance Schedule (3-1-72)
 Sec. 430 Monitoring and Reporting (3-1-72)
- Division 26—Rules for Open Field Burning (Willamette Valley)**
- Sec. 001 Introduction (7-3-84)
 Sec. 003 Policy (3-7-84)
 Sec. 005 Definitions (3-7-84)
 Sec. 010 General Requirement (3-7-84)
 Sec. 011 Repealed
 Sec. 012 Registration, Permits, Fees, Records (3-7-84)
 Sec. 013 Acreage Limitations, Allocations (3-7-84)
 Sec. 015 Daily Burning Authorization Criteria (3-7-84)
 Sec. 020 Repealed
 Sec. 025 Civil Penalties (3-7-84)
 Sec. 030 Repealed
 Sec. 031 Burning by Public Agencies (Training Fires) (3-7-84)
 Sec. 035 Experimental Burning (3-7-84)
 Sec. 040 Emergency Burning, Cessation (3-7-84)
 Sec. 045 Approved Alternative Methods of Burning (Propane Flaming) (3-7-84)
- Division 27—Air Pollution Emergencies**
- Sec. 005 Introduction (5-20-88)
 Sec. 010 Episoda State Criteria for Air Pollution Emergencies (5-20-88)
 Sec. 012 Special Conditions (5-20-88)
 Sec. 015 Source Emission Reduction Plans (10-24-83)
 Sec. 020 Repealed
 Sec. 025 Regional Air Pollution Authorities (10-24-83)
 Sec. 035 Operation and Maintenance Manual (10-24-83)
- Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area**
- Sec. 005 Purposes and Application (4-7-78)
- Sec. 010 Definitions (5-6-81)
 Sec. 015 Wood Waste Boilers (10-29-80, 6-13-86)
 Sec. 020 Veneer Dryer Emission Limitations (1-28-80)
 Sec. 025 Air Conveying Systems (4-7-78)
 Sec. 030 Wood Particle Dryers at Particleboard Plants (5-6-81)
 Sec. 031 Hardwood Manufacturing Plants (5-6-81)
 Sec. 035 Wigwam Waste Burners (10-29-80)
 Sec. 040 Charcoal Producing Plants (4-7-78)
 Sec. 043 Control of Fugitive Emissions (4-18-83)
 Sec. 044 Requirement for Operation and Maintenance Plans (4-18-83)
 Sec. 045 Compliance Schedules (4-18-83)
 Sec. 050 Continuous Monitoring (4-7-83)
 Sec. 055 Source Testing (4-7-78)
 Sec. 060 Repealed
 Sec. 065 New Sources (4-7-78)
 Sec. 070 Open Burning (4-7-78)
- Division 31—Ambient Air Quality Standards**
- Sec. 005 Definitions (3-1-72)
 Sec. 010 Purpose and Scope of Ambient Air Quality Standards (3-1-72)
 Sec. 015 Suspended Particulate Matter (3-1-72)
 Sec. 020 Sulfur Dioxide (3-12-72)
 Sec. 025 Carbon Monoxide (3-1-72)
 Sec. 030 Ozone (1-29-82)
 Sec. 035 Hydrocarbons (3-1-72)
 Sec. 040 Nitrogen Dioxide (3-1-72)
 Sec. 045 Repealed
 Sec. 050 Repealed
 Sec. 055 Ambient Air Quality Standard for Lead (1-21-83)
- Prevention of Significant Deterioration**
- Sec. 100 General (6-22-79)
 Sec. 110 Ambient Air Increments (6-22-79)
 Sec. 115 Ambient Air Ceilings (6-22-79)
 Sec. 120 Restrictions on Area Classifications (6-22-79)
 Sec. 125 Repealed
 Sec. 130 Redesignation (6-22-79)
- Division 34—Residential Wood Heating**
- Sec. 001 Purpose (11-13-91)
 Sec. 005 Definitions (11-13-91)
 Sec. 010 Requirements for Sale of Woodstoves (11-13-91)
 Sec. 015 Exemptions (11-13-91)
 Sec. 020 Civil Penalties (11-13-91)
 Sec. 050 Emission Performance Standards & Certification (11-13-91)
 Sec. 055 Efficiency Testing Criteria & Procedures (11-13-91)
 Sec. 060 General Certification Procedures (11-13-91)
 Sec. 065 Changes in Woodstove Design (11-13-91)
 Sec. 070 Labelling Requirements (11-13-91)
 Sec. 075 Removable Label (11-13-91)
 Sec. 080 Label Approval (11-13-91)
 Sec. 085 Laboratory Accreditation Requirements (11-13-91)
 Sec. 090 Accreditation Criteria (11-13-91)
 Sec. 095 Application for Laboratory Efficiency Accreditation (11-13-91)

- Sec. 100 On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration (11-13-91)
- Sec. 105 Accreditation Application Deficiency, Notification and Resolution (11-13-91)
- Sec. 110 Final Department Administrative Review and Certification of Accreditation (11-13-91)
- Sec. 115 Revocation and Appeals (11-13-91)
- Sec. 150 Applicability (11-13-91)
- Sec. 155 Determination of Air Stagnation Conditions (11-13-91)
- Sec. 160 Prohibition on Woodburning During Periods of Air Stagnation (11-13-91)
- Sec. 165 Public Information Program (11-13-91)
- Sec. 170 Enforcement (11-13-91)
- Sec. 175 Suspension of Department Program (11-13-91)
- Sec. 200 Applicability (11-13-91)
- Sec. 210 Removal and Destruction of Uncertified Stove Upon Sale of Home (11-13-91)
- Sec. 215 Home Seller's Responsibility to Disclose (11-13-91)
- 3.2 Lane Regional Air Pollution Authority Regulations**
- Title 11 Policy and General Provisions*
- 11-005 Policy (10-9-79)
- 11-010 Construction and Validity (10-9-79)
- Title 12 General Duties and Powers of Board and Director*
- 12-005 Authority of the Agency (11-8-83)
- 12-010 Duties and Powers of the Board of Directors (11-8-83)
- 12-020 Duties and Function of the Director (11-8-83)
- 12-025 Conflict of Interest (9-9-88)
- 12-035 Public Records and Confidential Information (11-8-83)
- Title 12 Definitions (2-13-90)*
- Title 14 Definitions (7-12-88)*
- Title 15 Enforcement Procedure and Civil Penalties*
- 15-001 Policy (5-25-90)
- 15-005 Definitions (5-25-90)
- 15-010 Consolidation of Proceedings (5-25-90)
- 15-015 Notice of Violation (5-25-90)
- 15-020 Enforcement Actions (5-25-90)
- 15-025 Civil Penalty Schedule Matrices (5-25-90)
- 15-030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors) (5-25-90)
- 15-035 Written Notice of Assessment of Civil Penalty—When Penalty Payable (5-25-90)
- 15-040 Compromise or Settlement of Civil Penalty by Director (5-25-90)
- 15-045 Stipulated Penalties (5-25-90)
- 15-050 Air Quality Classification of Violation (5-25-90)
- 15-055 Scope of Applicability (5-25-90)
- 15-060 Appeals (5-25-90)
- Title 32 Emission Standards*
- 32-005 General (9-14-82)
- 32-010 Restriction on Emission of Visible Air Contaminants; Including Veneer Dryers (9-14-82)
- 32-025 Exceptions—Visible Air Contaminant Standards (9-14-82)
- 32-030 Particulate Matter Weight Standards (9-14-82)
- 32-035 Particulate Matter Weight Standards—Existing Sources (9-14-82)
- 32-040 Particulate Matter Weight Standards—New Sources (9-14-82)
- 32-045 Process Weight Emission Limitations (9-14-82)
- 32-055 Particulate Matter Size Standard (9-14-82)
- 32-060 Airborne Particulate Matter (9-14-82)
- 32-065 Sulfur Dioxide Emission Limitations (9-14-82)
- 32-100 Plant Site Emission Limits Policy (9-14-82)
- 32-101 Requirement for Plant Site Emission Limits (9-14-82)
- 32-102 Criteria for Establishing Plant Site Emission Limits (9-14-82)
- 32-103 Alternative Emission Controls (Bubble) (9-14-82)
- 32-104 Temporary PSD Increment Allocation (11-8-83)
- 32-800 Air Conveying Systems (1-8-85)
- 32-990 Other Emissions (11-8-83)
- Title 33 Prohibited Practices and Control of Special Classes*
- 33-020 Incinerator and Refuse Burning Equipment (5-15-79)
- 33-025 Wigwam Waste Burners (5-15-79)
- 33-030 Concealment and Masking of Emissions (5-15-79)
- 33-045 Gasoline Tanks (5-15-79)
- 33-055 Sulfur Content of Fuels (5-15-79)
- 33-060 Board Products Industries (5-15-79)
- 33-065 Charcoal Producing Plants (5-15-79)
- 33-070 Kraft Pulp Mills (9-14-82)
- Title 34 Air Contaminant Discharge Permits*
- 34-001 General Policy and Discussion (1-9-90)
- 34-005 Definitions (2-13-90)
- 34-010 General Procedures for Obtaining Permits (1-9-90)
- 34-015 Special Discharge Permit Categories (1-9-90)
- 34-020 Discharge Permit Duration (1-9-90)
- 34-025 Discharge Permit Fees (1-9-90)
- 34-030 Source Emission Tests (1-9-90)
- 34-035 Upset Conditions (1-9-90)
- 34-040 Records (1-9-90)
- 34-045 General Procedures for Registration (1-9-90)
- 34-050 Compliance Schedules for Existing Sources Affected by New Rules (1-9-90)
- Title 38 New Source Review*
- 38-001 General Applicability (2-13-90)
- 38-005 Definitions (2-13-90)
- 38-010 General Requirements for Major Sources and Major Modifications (2-13-90)
- 38-015 Additional Requirements for Major Sources or Major Modifications Located in Nonattainment Areas (2-13-90)
- 38-020 Additional Requirements for Major Sources or Major Modifications in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (2-13-90)
- 38-025 Exemptions for Major Sources and Major Modifications (2-13-90)
- 38-030 Baseline for Determining Credits for Offsets (2-13-90)
- 38-035 Requirements for Net Air Quality Benefit for Major Sources and Major Modifications (2-13-90)
- 38-040 Emission Reduction Credit Banking (2-13-90)
- 38-045 Requirements for Non-Major Sources and Non-Major Modifications (2-13-90)
- 38-050 Stack Height and Dispersion Techniques (2-13-90)
- Title 47 Rules for Open Outdoor Burning*
- 47-001 General Policy (8-14-84)
- 47-005 Statutory Exemptions from These Rules (8-14-84)
- 47-010 Definitions (8-14-84)
- 47-015 Open Burning Requirements (8-14-84)
- 47-020 Letter Permits (8-14-84)
- 47-025 Records and Reports (8-14-84)
- 47-030 Summary of Seasons, Areas, and Permit Requirements for Open Outdoor Burning (8-14-84)
- Title 50 Ambient Air Standards*
- 50-005 General (7-12-88)
- 50-015 Suspended Particulate Matter (7-12-88)
- 50-025 Sulfur Dioxide (7-12-88)
- 50-030 Carbon Monoxide (7-12-88)
- 50-035 Ozone (7-12-88)
- 50-040 Nitrogen Dioxide (7-12-88)
- 50-045 Lead (7-12-88)
- Title 51 Air Pollution Emergencies*
- 51-005 Introduction (7-12-88)
- 51-010 Episode Criteria (7-12-88)
- 51-015 Emission Reduction Plans (7-12-88)
- 51-020 Preplanned Abatement Strategies (7-12-88)
- 51-025 Implementation (7-12-88)
- 3.3 OAR Chapter 629-43-043 Smoke Management Plan Administrative Rule (12-12-86)**
- 4. Control Strategies for Nonattainment Areas (1-86)**
- 4.1 Portland-Vancouver AQMA-Total Suspended Particulate (12-19-80)
- 4.2 Portland-Vancouver AQMA-Carbon Monoxide (7-16-82)
- 4.3 Portland-Vancouver AQMA-Ozone (7-16-82)
- 4.4 Salem Nonattainment Area-Carbon Monoxide (7-79)
- 4.5 Salem Nonattainment Area-Ozone (9-19-80)
- 4.6 Eugene-Springfield AQMA-Total Suspended Particulate (1-30-81)
- 4.7 Eugene-Springfield AQMA-Carbon Monoxide (6-20-79)
- 4.8 Medford-Ashland AQMA-Ozone (1-85)

- 4.9 Medford-Ashland AQMA-Carbon Monoxide (8-82)
- 4.10 Medford-Ashland AQMA-Particulate Matter (4-83)
- 4.11 Grants Pass Nonattainment-Carbon Monoxide (10-84)
- 5. Control Strategies for Attainment and Nonattainment Areas (1-86)**
 - 5.1 Statewide Control Strategies for Lead (1-83)
 - 5.2 Visibility Protection Plan (10-24-86)
 - 5.3 Prevention of Significant Deterioration (1-86)
- 6. Ambient Air Quality Monitoring Program**
 - 6.1 Air Monitoring Network (1-86)
 - 6.2 Data Handling and Analysis Procedures (1-86)
 - 6.3 Episode Monitoring (1-86)
- 7. Emergency Action Plan (1-86)**
- 8. Public Involvement (1-86)**
- 9. Plan Revisions and Reporting (1-86)**

Volume 3.—Appendices

	Appendix No.
Statewide Regulatory Provisions and Administration.	A
Directive 1-4-1-601 Operational Guidance for the Oregon Smoke Management Program/Slash Burning Smoke Management Plan.	A1
Field Burning Smoke Management Plan.	A2
Interagency Memoranda of Understanding Lead Agency Designations.	A3
Source Sampling Manual ..	A4
Air Quality Monitoring Quality Assurance Procedures Manual.	A5
Continuous Monitoring Manual.	A6
Control Strategies for Nonattainment Areas.	B
Portland-Vancouver AQMA.	B1
Legal Definition of TSP Nonattainment Area Boundaries.	B1-1
Carbon Monoxide Monitoring Program.	B1-2
Carbon Monoxide Emission Inventories.	B1-3
Volatile Organic Compound Emission Inventories.	B1-4
Input Factors Used to Develop Motor Vehicle Emissions.	B1-5
Salem Nonattainment Area Study Area	B2
Emission Inventories	B2-1
Existing Programs and Plans.	B2-2
Carbon Monoxide Analysis.	B2-3
Eugene-Springfield AQMA Unpaved Road Dust Inventory.	B2-4
	B3
	B3-1

Volume 3.—Appendices—Continued

	Appendix No.
Phase II Work Plans	B3-2
Medford-Ashland AQMA ..	B4
Legal Description of the Medford-Ashland AQMA.	B4-1
Documentation of Ozone Standard Attainment Projection.	B4-2
Air Quality Work Plan ...	B4-3
Volatile Organic Compound Emissions Inventory.	B4-4
Carbon Monoxide Emission Inventory.	B4-5
Reasonably Available Transportation Measures.	B4-6
Description of the Projected TSP Nonattainment Area.	B4-7
Attainment Dates for Newly Designated Nonattainment Areas.	B4-8
Statewide Control Strategies.	C
Lead	C1
Lead Emission Inventories for Portland-Vancouver AQMA.	C1-1

4. Section 52.1987 is revised to read as follows:

§ 52.1987 Significant deterioration of air quality.

(a) The Oregon Department of Environmental Quality rules for prevention of significant deterioration of air quality (OAR 340-20-220 through 270; OAR 340-20-340 and 345; and OAR 340-31-100, 105 subsections (12), (15) and (16), 110, 115, 120 and 130) are approved as meeting the requirements of part C.

(b) The Lane Regional Air Pollution Authority rules for permitting new and modified major stationary sources (Title 38 New Source Review) are approved, in conjunction with the Oregon Department of Environmental Quality rules, in order for the Lane Regional Air Pollution Authority to issue prevention of significant deterioration permits within Lane County.

(c) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing the significant deterioration of air quality on Indian reservations and, therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Oregon.

5. Section 52.1988(b) is revised to read as follows:

§ 52.1988 Air contaminant discharge permits.

(b) Emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the Lane Regional Air Pollution Authority in accordance with the provisions of the federally-approved Air Contaminant Discharge Permits rule (Title 34) and Plant Site Emission Limit rules (Title 32, Section 32-100 through 104) and in conjunction with the federally-approved Oregon Department of Environmental Quality rules, except alternative emission limits (bubbles) for sulfur dioxide or total suspended particulates which involve trades where the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

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40 CFR Parts 52 and 81

[NC58-1-5989; FRL-4700-9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 13, 1992, the State of North Carolina, through the North Carolina Department of Environment, Health, and Natural Resources (NCDEHNR), submitted a maintenance plan and a request to redesignate the Greensboro/Winston-Salem/High Point area (classified as a moderate nonattainment area) from nonattainment to attainment for ozone (O₃). The O₃ nonattainment area includes the following counties: Forsyth, Guilford, Davidson, and the portion of Davie bounded by the Yadkin River, Dutchman's Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such changes. In this action, EPA is approving the State of North Carolina's submittal because it meets the maintenance plan and redesignation requirements. The approved maintenance plan will become a federally enforceable part of the SIP for

the Greensboro/Winston-Salem/High Point area.

On January 15, 1993, in a letter from Patrick Tobin to Governor James Hunt, the EPA notified the State of North Carolina that the EPA had made a finding of failure to submit required programs for the nonattainment area. The required submittals pertained to Emission Statements, New Source Review (NSR), VOC RACT catch-ups, Stage II Regulations, and the Inspection and Maintenance (I/M) Program. Furthermore, the letter stated that the sanctions and Federal Implementation Plan (FIP) process would stop upon final approval of submitted corrections to the SIP. The NCDEHNR submitted its request for the redesignation of the Greensboro/Winston-Salem/High Point area prior to the statutory due date for the programs mentioned above. Therefore, this redesignation request is considered to be a correction to the SIP and upon its final approval the sanctions and FIP processes will stop completely.

EFFECTIVE DATE: This action will be effective November 8, 1993, unless notice is received by October 12, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Written comments should be sent to Bill Eckert at the EPA address in Atlanta, Georgia listed below. Copies of the redesignation request and the State of North Carolina's submittal are available for public review during normal business hours at the addresses listed below. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Public Information Reference Unit, Attn: Jerry Kertzwing AN 443, Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA, 30365.

North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina, 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina, 27101-1362.

FOR FURTHER INFORMATION CONTACT: Bill Eckert of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.) Under section 107(d)(1), in conjunction with the Governor of North Carolina, EPA designated the Greensboro/Winston-Salem/High Point area as nonattainment because the area violated the O₃ standard during the period from 1987 through 1989. Furthermore, upon designation, the Greensboro/Winston-Salem/High Point area was classified as moderate under section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR Part 81 § 334.)

The Greensboro/Winston-Salem/High Point area more recently has ambient monitoring data that show no violations of the O₃ National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1992. In addition, there have been no violations reported for the 1993 O₃ season, to date. Therefore, in an effort to comply with the amended Act and to ensure continued attainment of the NAAQS, on November 13, 1992, the State of North Carolina submitted for parallel processing an O₃ maintenance SIP for the Greensboro/Winston-Salem/High Point area and requested redesignation of the area to attainment with respect to the O₃ NAAQS. On January 13, 1993, the NCDEHNR submitted evidence that a public hearing was held on the maintenance plan and on July 8, 1993, the maintenance plan became State effective.

On August 11, 1993, Region IV determined that the information received from the NCDEHNR constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when NCDEHNR first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended Act, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines" Memorandum from John Calcagni to Air Programs Division Directors, Regions I-X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel

processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (See Memorandum at 3-4.) However, since requests for redesignation are not mandatory submittals under the CAA, EPA believes that it must change its policy with respect to redesignation submittals to conform to the existing completeness criteria. Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the Agency decides to revise that exception. NCDEHNR submitted a redesignation request on November 13, 1992. In the November 13 submittal, NCDEHNR submitted the maintenance plan, thereby including the final element to make the November 13, 1992, request for parallel processing complete under the parallel processing exception to the completeness criteria. When the maintenance plan became state effective on July 8, 1993, the State of North Carolina no longer needed parallel processing for the redesignation request and maintenance plan. Therefore, the EPA informed the State of North Carolina on August 11, 1993, through a letter from Douglas Neeley to Preston Howard, that the redesignation request and maintenance plan submittals were complete under the general completeness criteria.

II. Review of State Submittal

The North Carolina redesignation request for the Greensboro/Winston-Salem/High Point area meets the five requirements of section 107(d)(5)(E) for redesignation to attainment. The following is a brief description of how the State of North Carolina has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O₃ NAAQS

The State of North Carolina's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Most recent ambient air quality monitoring data for calendar year 1989 through calendar year 1992 show an expected exceedance rate of less than 1.0 per year of the O₃ NAAQS in the Greensboro/Winston-Salem/High Point area. (See 40 CFR 50.9 and appendix H.) Because the

Greensboro/Winston-Salem/High Point area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Greensboro/Winston-Salem/High Point area has met the first statutory criterion of attainment of the O₃ NAAQS. In addition, there have been no violations reported for the 1993 O₃ season, to date. The State of North Carolina has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the Act

On April 17, 1980, and on September 10, 1980, EPA fully approved North Carolina's SIP as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act (45 FR 26038 and 45 FR 59578). The amended Act, however, revised section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA reviewed the North Carolina SIP and ensures that it contains all measures due under the amended Act prior to or at the time the State of North Carolina submitted its redesignation request.

A. Section 110 Requirements

Although Section 110 was amended by the CAA, the Greensboro/Winston-Salem/High Point area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, *see* 57 FR 27936 and 57 FR 27939 (June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before the Greensboro/Winston-Salem/High Point area may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of Part D establishes additional requirements for O₃ nonattainment areas classified under table 1 of section 181(a). The

Greensboro/Winston-Salem/High Point area is classified as moderate (*See* 56 FR 56694, codified at 40 CFR 81.334). The State of North Carolina submitted their request for redesignation of the Greensboro/Winston-Salem/High Point area prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the State of North Carolina must meet the applicable requirements of Subpart 1 of Part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of Subpart 2 of Part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D—Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O₃ nonattainment areas on or before November 13, 1992, the date that the State of North Carolina submitted a complete redesignation request for the Greensboro/Winston-Salem/High Point area. Therefore, the State of North Carolina was not required to meet these requirements for purposes of redesignation. Upon redesignation of this area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in Part C of Title I are applicable. On December 30, 1976, and on February 23, 1982, the EPA approved the State of North Carolina's PSD program (41 FR 56805 and 47 FR 78376).

B2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions Section 176 of the Act requires States to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations. Section 176 provides that EPA must develop federal conformity regulations, requiring states to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; therefore, no regulatory submittal date has been established. However, the State of North Carolina has committed in their maintenance plan to revise the SIP to be consistent with the final federal regulations on conformity upon promulgation of these rules. In addition, the State Air Quality Section will work closely with the State Department of Transportation (DOT) and local transportation agencies to assure that Transportation Improvement Programs (TIPs) in the maintenance areas are consistent with and conform to the SIP and meet federal requirements on conformity. This review process is being extended to include all major projects regardless of source of funding,

as well as all federally funded projects. A complete description of the conformity review process is included in the TSD accompanying this notice.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended Act and EPA's prior approval of SIP revisions under the amended Act, EPA has determined that the Greensboro/Winston-Salem/High Point area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Greensboro/Winston-Salem/High Point area violated the O₃ NAAQS. Of these control measures, two control measures produced the most significant decreases in VOC and NO_x emissions. One control measure is a reduction of fuel volatility, as measured by the Reid Vapor Pressure (RVP), from 10.1 psi in 1988 to 9.0 psi in 1990 and then to 7.8 psi in the summer of 1992. As a result of the RVP reductions, there has been a reduction of emissions of VOCs of more than 25% from 1988 to 1992 from gasoline powered vehicles of all classes. The other control measure is the improvement in tailpipe emissions associated with the Federal Motor Vehicle Control Program (FMVCP). This program reduces VOC and NO_x emissions as newer, cleaner vehicles replace older, high emitting vehicles. VOC emissions reductions are 21.6% from 1988 to 1990 and NO_x emissions reductions are 3.7% from 1988 to 1990.

In association with its emission inventory discussed below, the State of North Carolina has demonstrated that actual enforceable emission reductions are responsible for the recent air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn.

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the

ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the State of North Carolina's maintenance plan for the Greensboro/Winston-Salem/High Point area because EPA finds that the State of North Carolina's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the State of North Carolina submitted comprehensive inventories of VOC, NO_x, and CO emissions from the Greensboro/Winston-Salem/High Point area. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. The 1990 Base Year Emission Inventory for the Greensboro/Winston-Salem/High Point

area has been submitted to EPA in SIP Air Pollutant Inventory Management Subsystem (SAMS) format.

The State of North Carolina submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SAMS format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories are shown in the following three tables. Refer to the TSD accompanying this notice for more in-depth details regarding the base year inventory for the Greensboro/Winston-Salem/High Point area.

VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	82.30	83.69	74.04	63.42	66.59	68.59
Area	180.76	178.25	179.54	180.67	183.16	184.68
Mobile	88.30	73.91	73.41	73.54	74.06	74.97
Total	351.36	335.85	326.99	317.63	323.81	328.24

NO_x EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	23.04	24.14	25.24	26.31	27.23	27.81
Area	0.29	0.29	0.29	0.29	0.29	0.29
Mobile	99.76	100.01	100.40	96.96	91.13	90.28
Total	123.09	124.44	125.93	123.56	118.65	118.38

CO EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	5.37	5.51	5.71	5.90	6.06	6.15
Area	40.98	41.00	41.01	41.02	41.03	41.04
Mobile	710.25	612.50	601.28	593.39	601.53	612.92
Total	756.60	659.01	648.00	640.31	648.62	660.11

B. Demonstration of Maintenance—Projected Inventories Total VOC, NO_x, and CO emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. Refer to EPA's TSD accompanying this notice for more in-depth details regarding the projected inventory for the Greensboro/Winston-Salem/High Point area. The projections indicate that VOC and CO emissions decrease steadily from 1990 through 2004. However, the projections show an increase over the 1990 NO_x level of 1.10% in 1993, 2.31% in 1996, and 0.38% in 1999. To date, this level

of increase in NO_x has not caused a violation of the NAAQS. EPA believes that the emissions projections demonstrate that the area will continue to maintain the O₃ NAAQS because this area achieved attainment through VOC controls and reductions. The projected emission inventories were submitted in the SAMS format.

C. Verification of Continued Attainment

Continued attainment of the O₃ NAAQS in the Greensboro/Winston-Salem/High Point area depends, in part, on the State of North Carolina's efforts toward tracking indicators of continued

attainment during the maintenance period. The State of North Carolina's contingency plan is triggered by two indicators, an air quality violation or the periodic emissions inventory exceeds the baseline emission inventory by more than 10%. As stated in the maintenance plan, the NCDEHNR will be developing these periodic emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment. Refer to the TSD accompanying this notice for a more complete discussion of the indicators the State is tracking and the contingency measures.

D. Contingency Plan

The level of VOC and NO_x or CO emissions in the Greensboro/Winston-Salem/High Point area will largely determine its ability to stay in compliance with the O₃ NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the State of North Carolina has provided contingency measures with a schedule for implementation in the event of a future O₃ air quality problem. The plan contains a contingency to implement pre-adopted additional control measures such as Reasonable Available Control Technology (RACT) level control for not previously controlled VOC sources, Stage II vapor control for gasoline dispensing facilities, and new source permit requirements for VOC and NO_x emissions to include emission offsets, Lowest Achievable Emission Rate (LAER) level control, and permit applicability. These pre-adopted additional measures will be implemented within 45 days of the date the State certifies to EPA that the air quality data which demonstrates a violation of the O₃ NAAQS is quality assured. The plan also contains a secondary trigger that will apply where no actual violation of the NAAQS has occurred. On the occurrence of the secondary trigger, the State will commence, within 60 days of the trigger, regulation development and adoption of measures amending the State vehicle inspection and maintenance (I/M) program, extending coverage of the I/M program, extending and/or lowering vapor pressure limits for gasoline, extending geographic coverage of RACT controls, transportation control measures, and RACT level control for NO_x. A complete description of these contingency measures and their triggers can be found in the TSD accompanying this notice. EPA finds that the contingency measures provided in the State of North Carolina submittal meet the requirements of Section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of North Carolina has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this final action, EPA is approving the Greensboro/Winston-Salem/High Point O₃ maintenance plan because it meets the requirements of Section 175A. In addition, the Agency is redesignating the Greensboro/Winston-Salem/High Point area to attainment for O₃ because the State of North Carolina has demonstrated compliance with the requirements of Section 107(d)(3)(E) for redesignation. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The O₃ SIP is designed to satisfy the requirements of Part D of the Clean Air Act and to provide for attainment and maintenance of the O₃ NAAQS. This final redesignation should not be interpreted as authorizing the State of North Carolina to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved O₃ SIP. Changes to O₃ SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Clean Air Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Clean Air Act.

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State of North Carolina is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an

action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on November 8, 1993. If, however, notice is received by October 12, 1993 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One will withdraw the final action and the other will begin a new rulemaking by announcing a comment period.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: August 23, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 52.1770 is amended by adding paragraph (c)(66) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(66) The maintenance plan and emission inventory for Greensboro/

Winston-Salem/Highpoint Area which includes Davidson County, Davis County (part) the area bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River, Forsyth County and Guilford County, submitted by the North Carolina Department of Environment, Health, and Natural Resources on November 13, 1992, and June 1, 1993, as part of the North Carolina SIP.

(i) Incorporation by reference.

(A) Supplement to the Redesignation Demonstration and Maintenance Plan For Raleigh/Durham and Greensboro/ Winston-Salem/High Point Ozone Attainment Areas submitted June 1, 1993 and Prepared by the North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, Air Quality Section. The effective date is July 8, 1993.

(1) Section 2— Discussion of Attainment.

(2) Section 3—Maintenance Plan.

(3) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1990.

(4) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1993.

(5) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1996.

(6) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1999.

(7) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 2002.

(8) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 2004.

(ii) Other material. None

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 81.334 is amended by revising the attainment status designation table for ozone to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE

Designation area	Designation		Classification	
	Date ¹	Type	Date ¹	
Charlotte-Gastonia Area:				
Gaston County		Nonattainment		Moderate.
Mecklenburg County		Nonattainment		Moderate.
Raleigh-Durham Area:				
Durham County	1/6/92	Nonattainment	1/6/92	Moderate.
Granville County (part)	1/6/92	Nonattainment	1/6/92	Moderate.
Dutchville Township				
Wake County	1/6/92	Nonattainment	1/6/92	Moderate.
Rest of State		Unclassifiable/Attainment.		
Alamance County				
Alexander County				
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County				
Cabarrus County				
Caldwell County				
Camden County				
Carteret County				
Caswell County				
Catawba County				
Chatham County				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				

NORTH CAROLINA—OZONE—Continued

Designation area	Designation		Classification	
	Date ¹	Type	Date ¹	
Cumberland County				
Currituck County				
Dare County				
Davidson County	September 9, 1993.			
Davie County	September 9, 1993.			
Duplin County				
Edgecombe County				
Forsyth County	September 9, 1993.			
Franklin County				
Gates County				
Graham County				
Granville County (part) Remainder of county				
Greene County				
Guilford County	September 9, 1993.			
Halifax County				
Harnett County				
Haywood County				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County				
Jackson County				
Johnston County				
Jones County				
Lee County				
Lenoir County				
Lincoln County				
McDowell County				
Macon County				
Madison County				
Martin County				
Mitchell County				
Montgomery County				
Moore County				
Nash County				
New Hanover County				
Northhampton County				
Onslow County				
Orange County				
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Person County				
Pitt County				
Polk County				
Randolph County				
Richmond County				
Robeson County				
Rockingham County				
Rowan County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				
Swain County				
Transylvania County				
Tyrrell County				
Union County				
Vance County				
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				

NORTH CAROLINA—OZONE—Continued

Designation area	Designation		Classification	
	Date ¹	Type	Date ¹	
Yancey County				

¹ This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 93-21923 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 55

[FRL-4727-3]

Codification of Corresponding Onshore Area Designations and Notice of Convening Proceeding for Reconsideration of Certain Corresponding Onshore Area Designations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to codification and convening proceeding for reconsideration.

SUMMARY: This document contains a correction to the effective date of the document in 58 FR 14157 published Tuesday, March 16, 1993. The effective date pertains to the codification of the final action taken by the Administrator designating corresponding onshore areas ("COAs") for all existing OCS sources. This action was taken concurrent with the final rulemaking promulgating the Outer Continental Shelf ("OCS") Air Regulations, and was published in the preamble to that rule on September 4, 1992.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard (415) 744-1195, 75 Hawthorne Street, San Francisco, CA 94015.

SUPPLEMENTARY INFORMATION: As published, the effective date contains an error which may prove to be misleading and is in need of clarification. The effective date was printed as September 4, 1993 but should be September 4, 1992.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, et seq.) as amended by Pub. L. 101-549.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Outer continental shelf, Ozone, Sulfur oxides, Nitrogen dioxides, Intergovernmental relations, Reporting and recordkeeping requirements, Permits.

Dated: September 2, 1993.

Carol M. Browner,
Administrator.

[FR Doc. 93-21983 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[APD 2800.12A CHGE 46]

General Services Administration Acquisition Regulation; Price Adjustment Clause for Service Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: Pursuant to a court decision, the General Services Administration Acquisition Regulation (GSAR), (APD 2800.12A), is deleting the prescription for use of the Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) clause in lieu of the Federal Acquisition Regulation (FAR) clause. The change also deletes the text of the GSAR clause.

EFFECTIVE DATE: August 14, 1993. Solicitations issued on or after August 14, 1993, shall include the applicable FAR clause. Solicitations issued under sealed bidding procedures with bid opening scheduled on or after August 14, 1993, shall be amended to include the applicable FAR clause. Solicitations issued under negotiated procurement procedures shall be amended if the award has not been made. Contracts which contain the June 1992 clause at GSAR 552.222-43 or its predecessor GSAR clause shall be modified to replace that clause with the applicable FAR clause unless the contract is in the last year of a multiyear contract or the last option year of a contract with options to extend the period of performance. The recoupment provision of the 1992 GSAR clause will not be enforced by GSA contracting officers.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Background

On August 13, 1993, the United States District Court for the District of Columbia issued a Declaratory Judgment in Civil Action No. 91-1628 (CRR), *Service Employees International Union, AFL-CIO v. General Services Administration et al.*, that the General Services Administration's regulation published at 57 FR 22664-68 (1992) is arbitrary, capricious, and contrary to law under the Administrative Procedures Act, 5 U.S.C. 701 et sequentia, and enjoined GSA from further use or enforcement of the regulation. This change deletes those provisions of the regulation that were found to be contrary to law.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 522 and 552.

Government procurement.

48 CFR parts 522 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 522 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 522 [AMENDED]

Subpart 522.10 Service Contract Act of 1965

2. Section 522.1006 is revised to read as follows:

522.1006 Clauses for contracts over \$2,500.

The clauses prescribed in FAR 22.1006 (a) and (b) may be repeated verbatim in solicitations and contracts or the GSA Form 2166, Service Contract Act of 1965 (As Amended) and

Statement of Equivalent Rates for
Federal Hires, may be used.

PART 522—[AMENDED]

552.222-43 [Removed].

3. Section 552.222-43 is removed.

Dated: August 27, 1993.

Richard H. Hopf, III,
*Associate Administrator for Acquisition
Policy.*

[FR Doc. 93-21513 Filed 9-8-93; 8:45 am]

BILLING CODE 6820-01-M

Proposed Rules

Federal Register

Vol. 58, No. 173

Thursday, September 9, 1993

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

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0809]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to amend its Regulation O, which governs extensions of credit to insiders of banks. The proposal narrows the definition of "extension of credit", adopts exceptions to the general restrictions on lending to insiders and special restrictions on lending to executive officers, and permits banks to follow alternative recordkeeping procedures. These amendments are intended to increase the ability of banks to make extensions of credit that pose minimal risk of loss, to remove other transactions from the regulation's coverage, and to eliminate recordkeeping requirements that impose a paperwork burden but do not significantly aid compliance with the regulation. These amendments are expected to increase the availability of credit, particularly in communities served by small banks, and to reduce the cost of compliance with the regulation. Other minor revisions to the regulation clarifying certain exemptions and conforming certain provisions to the enabling statutes are included as well. The Board is requesting public comment on each of these proposed revisions.

DATES: Comments should be submitted on or before October 12, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0809, may be mailed to the Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45

am and 5:15 pm, and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B-1122 between 9:00 am and 5:00 pm weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), or Stephen Van Meter, Attorney (202/452-3554), Legal Division; or Stephen M. Lovette, Manager of Policy Implementation (202/452-3622), or William G. Spaniel, Supervisory Financial Analyst (202/452-3469), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Consumer Installment Paper

Section 22(h) of the Federal Reserve Act (Act) governs extensions of credit by a bank to its executive officers, directors, and principal shareholders (insiders), and to companies controlled by its insiders (related interests), individually and as a class. See 12 U.S.C. 375b(4) and (5). In order to permit appropriate revisions of these restrictions, the Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550 § 955, 106 Stat. 3672 (1992), authorized the Board to adopt exceptions to the definition of "extension of credit" in section 22(h) for transactions that pose minimal risk to the lending bank. Pursuant to such authority, the Board previously has adopted three exceptions to the definition for purposes of calculating the aggregate lending limit. See 58 FR 26507 (1993).

The proposed rule would adopt an additional exception to the aggregate lending limit for the discount of consumer installment paper from an insider with recourse, so long as the bank is relying primarily upon the creditworthiness of the maker of the

paper and not on any endorsement or guarantee of the insider.¹

The legislative history of HCDA states that the Board should make a "zero-based review" of any exceptions it adopts. See 138 Cong. Rec. S17,914-15 (daily ed. October 8, 1992). The proposed exception is consistent with this directive. The Board believes that, where the bank is relying primarily upon the creditworthiness of the underlying maker, the accompanying extension of credit to an insider transferring the paper with recourse poses minimal risk of loss to the bank. In addition, like the previous three exceptions, the proposed exception is found in the National Bank Act, and is incorporated as an exception to the individual lending limit in Regulation O. See 12 U.S.C. 84(c)(8); 12 CFR 215.2(h) and 215.4(c).

Although extensions of credit made in conformity with the proposed exception would not count toward a bank's aggregate lending limit, such extensions of credit would continue to be extensions of credit under 12 CFR 215.3(a)(4) and would remain subject to the general requirements found at sections 215.4(a) and (b) of Regulation O, as a safeguard against abuse of this exception.

II. Definition of "Extension of Credit"

The Board is proposing three amendments to the definition of "extension of credit" in Regulation O concerning the "tangible economic benefit" rule, the discount by a bank of obligations sold by an insider without recourse, and the threshold for treating credit card debt as an extension of credit.

A. "Tangible Economic Benefit" Rule

Regulation O currently provides that an extension of credit is deemed to be made to an insider when the proceeds of the credit are used for the tangible economic benefit of, or are transferred to, the insider. 12 CFR 215.3(f). Following the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, section 306 (1991), which expanded the lending limit provision of section 22(h) to cover

¹ Such transactions would continue to constitute extensions of credit subject to the aggregate lending limit if the maker of the consumer installment paper was an insider or a related interest of an insider.

directors and their related interests, questions have been raised regarding the scope and proper application of the tangible economic benefit provision. If interpreted literally, the tangible economic benefit rule would apply whenever a bank extends credit to any person, including a member of the general public with no other relationship to the bank, and the proceeds of the extension of credit are transferred to or used for the benefit of an insider or an insider's related interest. For example, if a third party borrowed money from a bank in order to purchase a house owned by one of the bank's directors, the loan would be deemed an extension of credit to the director. Similarly, if a bank financed the purchase of consumer goods or services from a company controlled by one of its directors, the bank would be deemed under Regulation O to have extended credit to the director. The tangible economic benefit rule was not intended to reach arm's-length, bona fide transactions with the general public, and the proposed amendment would confirm that fact.

The tangible economic benefit rule is similar to a provision contained in section 23A of the Act, and was adopted at a time when the Board was required by section 22(h) to use the definition of "extension of credit" found in section 23A. See Pub. L. 95-630 § 104, 92 Stat. 3644 (1978). The definition of extension of credit in section 22(h), however, is no longer tied to section 23A, and the Board is authorized to adopt appropriate definitions of terms in the statute. See 12 U.S.C. 375b(9)(D) and 375b(10). The Board believes that the difficulties that have arisen with regard to the application of the tangible economic benefit rule can be remedied by providing explicitly that the rule does not apply to an arm's-length² extension of credit by a bank to a third party where the proceeds of the credit are used to finance the bona fide acquisition of property, goods, or services from an insider or an insider's related interest.

Extensions of credit to an insider's nominee and transactions in which the proceeds of the credit are loaned to an insider would continue to be covered by the rule. The Board notes that other provisions in the definition of "extension of credit" would continue to reach transactions in which an insider actually becomes obligated to a bank, "whether the obligation arises directly

² In order to satisfy this requirement, the extension of credit to the general public must be on terms that would satisfy the standard set forth in § 215.4(a) of Regulation O if the extension of credit was being made directly to an insider or an insider's related interest.

or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever." 12 CFR 215.3(a)(8).

B. Discounting Obligations Without Recourse

Currently, Regulation O includes within the definition of "extension of credit" any "discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse." 12 CFR 215.3(a)(5) (emphasis added). At the time this provision was adopted, the Board was required by section 22(h) to include such items in the regulatory definition of extension of credit.³ However, the current statutory definition does not require the inclusion of such items where the transaction is made without recourse to the transferor.⁴ The proposed rule would delete this provision so as to exclude non-recourse transactions. Transactions entered into with recourse to the transferor would continue to be covered under other provisions of the definition. See 12 CFR 215.3(a)(4) and (8).

The Board believes that the proposed modification would be consistent with the purposes of Regulation O and the Act. Neither the statute nor the regulation is designed or intended to cover all transactions between a bank and its insiders, but only to cover transactions involving an extension of credit to the insider from the bank. Non-recourse transactions resemble a purchase of assets more than an extension of credit, and adoption of the proposed change would conform the treatment of these transactions with the treatment of other asset purchases between a bank and its insiders. Moreover, these non-recourse transactions do not constitute "extensions of credit" to the transferor

³ The current definition of "extension of credit" in Regulation O was adopted in 1979, when the Board substantially amended the regulation in order to implement the Financial Institutions Regulatory Act of 1978 (FIRA), Pub. L. 95-630 § 104, 92 Stat. 3644 (1978). 44 FR 12963 (1979). FIRA added section 22(h) to the Act, which in turn incorporated the definition of "extension of credit" contained in section 23A. At that time, section 23A's definition included the above-referenced provision concerning the discount of paper acquired with or without recourse. See Pub. L. 89-485 § 12, 80 Stat. 241 (1966).

⁴ The statutory cross-reference to section 23A was deleted from section 22(h) in 1982. See Pub. L. 97-230 § 410, 96 Stat. 1520 (1982). FDICIA added a new definition of "extension of credit" to section 22(h), which applies whenever a member bank makes or renews a loan, grants a line of credit, or enters into any similar transaction as a result of which a person becomes obligated to pay money or its equivalent to the bank. See 12 U.S.C. 375b(9)(D). This definition does not cover all transactions, such as the purchase of assets, covered by section 23A.

under the National Bank Act as interpreted by the Office of the Comptroller of the Currency. See 12 U.S.C. 84(b)(1); 12 CFR 32.2(a). These transactions would continue to be governed by general standards of safety and soundness, prohibitions against fraud and abuse, and corporate fiduciary duties.⁵

C. Credit Card Plan Indebtedness

Regulation O currently exempts from the definition of "extension of credit" indebtedness of \$5,000 or less arising through any general arrangement by which a bank: (1) Acquires charge or time credit accounts; or (2) Makes payments to or on behalf of participants in a bank credit card plan or other open-end credit plan.

To qualify for the exemption, the indebtedness must be on market terms and must not involve prior individual clearance or approval by the bank other than for the purpose of determining the borrower's eligibility and compliance with any applicable dollar limit under the arrangement.

This credit card exemption, and the \$5,000 limit, were enacted in 1979. Since 1979, inflation has reduced the purchasing power of this amount of credit, and credit card limits generally available to the public have increased. In 1979, a credit limit in excess of \$5,000 would have been unusual. However, institutions now routinely extend credit to the holders of "premium" or "gold" cards in amounts considerably greater than \$5,000. Accordingly, the Board is proposing to increase the limit from \$5,000 to \$15,000.⁶ The requirements that the credit be granted on market terms and without prior individual approval (except to determine eligibility and compliance with the credit limit) would be retained, and would continue to protect against abuse.

III. Recordkeeping Procedures

Section 215.8 of Regulation O currently requires that each bank maintain records necessary for compliance with the insider lending restrictions of Regulation O. In particular, banks are required to maintain records identifying all insiders of the bank and its affiliates and all related interests of those insiders and records specifying the amount and terms of all credit extended to these persons. Section 215.8 further requires

⁵ In addition, sections 23A and 23B of the Act may be applicable to such transactions if the insider or the insider's related interest is an affiliate of the lending bank as defined in section 23A.

⁶ The \$5,000 limit would remain in effect for interest-bearing overdraft credit plans.

each bank to request its insiders to identify their related interests on an annual basis.

As bank holding companies have become increasingly large and diversified, and as commercial organizations have acquired credit card banks and limited purpose banks,⁷ the recordkeeping burden imposed by Regulation O has become increasingly large and, in certain cases, unnecessary. The Board has received several requests for relief from the recordkeeping requirements and believes that the issues raised in those requests warrant regulatory treatment.

The proposed amendment to section 215.8 would retain the requirement that a bank maintain records necessary to ensure compliance with Regulation O, but would allow a bank to choose an appropriate method for doing so. The amendment would specify two methods for compliance that are presumptively sufficient, and would permit a bank to use any combination of those two methods or a method of its own that was appropriate given the particular circumstances of the bank.

The first method identified in the proposed regulation is the current system of maintaining a record of all insiders of the bank and its affiliates and all related interests of those insiders.⁸ The list of insiders and related interests is then used by the bank to identify all existing or proposed extensions of credit covered by Regulation O, to monitor the amount thereof subject to the individual and aggregate lending limits, and to ensure that all appropriate approval procedures are followed.

Under the second method identified in the proposed regulation, the bank could require each borrower to state, at the time an application is made for an extension of credit, whether the borrower is an insider or a related interest of an insider of the bank or one of its affiliates. Any affirmative responses would be used to maintain a list of insider credits and to monitor compliance with lending limits and approval procedures.

The proposed amendment would eliminate the requirement that each bank conduct an annual survey to identify its insiders' related interests. Banks that continue to use the first method for compliance would still need to conduct a survey or some other appropriate information-gathering procedure, in order to identify insiders

and their related interests and to monitor changes in this group. Banks using the second method for compliance, however, might not need to make any effort to identify related interests that do not actually borrow from the bank.

By allowing a bank to choose a method for ensuring compliance that is adapted to the particular circumstances of the bank, the proposed amendment would allow banks to minimize unnecessary recordkeeping. In certain cases, a combination of methods might be considered to be appropriate. For example, a bank that actively made personal loans but made very few commercial loans might choose to continue surveying insiders about their personal borrowing but, instead of asking its insiders about their related interests, might choose to ask all commercial borrowers when a loan was applied for or renewed whether they were related interests of insiders. By identifying all extensions of credit to related interests through the lending process, the bank would make a survey of related interests unnecessary.⁹

In some cases, a bank may not need to maintain any records concerning related interests of insiders. For example, under the Competitive Equality Banking Act of 1987 (CEBA), an institution qualifies as a credit card bank only if it "does not engage in the business of making commercial loans." 12 U.S.C. 1841(c)(2)(F)(v). Because any extension of credit to a company or political or campaign committee would constitute a commercial loan, CEBA credit card banks are effectively prohibited from extending credit to related interests of insiders. Therefore, no purpose is served by the current rule requiring CEBA credit card banks to identify related interests of their insiders. Other financial institutions, including certain trust companies, thrifts, and other institutions that may refrain from making commercial loans, also may determine that maintaining records on related interests of insiders is unnecessary.

The suitability of any procedure for monitoring lending to insiders and their related interests must be determined, of course, on the basis of the effectiveness of the procedure in preventing violations of law and insider abuse. Any alternative recordkeeping procedure must sufficiently identify extensions of credit covered by Regulation O to ensure that proper monitoring of and

compliance with insider lending restrictions is maintained.

The Board seeks specific comment on whether any recordkeeping methods other than the two identified in the proposed regulation should be considered presumptively sufficient. The Board also seeks comment on whether the proposal on recordkeeping provides sufficient guidance to institutions and examiners regarding what constitutes adequate recordkeeping.

IV. Loans to Executive Officers

A. General Purpose Loans

Section 22(g) of the Act governs extensions of credit by a bank to its executive officers. Section 22(g) provides that a bank may make certain home mortgage loans and educational loans to its executive officers without any restriction as to amount. However, a bank may not make loans to its executive officers for other purposes in excess of an amount prescribed by the appropriate federal banking agency. See 12 U.S.C. 375a(4). Pursuant to this authority, the Board has authorized a bank to extend credit to its executive officers for general purposes in an amount equal to the greater of \$25,000 or 2.5 percent of the bank's capital and unimpaired surplus, but not to exceed \$100,000. 12 CFR 215.5(c)(3). Currently, there is no exception to the Board's regulatory lending limit on loans for other purposes. This is in contrast to other provisions of Regulation O that contain exceptions to lending limits based on the manner in which the extension of credit is collateralized. See 12 CFR 215.4(c) and (d)(3).

The Board is proposing, under its authority to prescribe by regulation the amount of credit that may be extended by a bank to its executive officers for a purpose not otherwise specifically authorized, to exempt an extension of credit by a bank to its executive officer from the lending limit set forth in 12 CFR 215.5(c)(3) when the loan is fully secured by:

- (a) Obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States;
- (b) Commitments or guarantees of a department or agency of the United States; or
- (c) A segregated deposit account with the lending bank.

The Board previously has determined that extensions of credit collateralized in the manner described above pose minimal risk of loss to a bank. See 58 FR 26507 (1993). In view of this determination, the Board believes that it

⁷ See 12 U.S.C. 1841(c)(2).

⁸ Under the proposal, the list could be updated through an annual request to insiders to identify related interests, as required by the current regulation, or through some other appropriate mechanism.

⁹ Similarly, a bank that extends credit only in the United States might be able to devise an adequate recordkeeping system that does not track insiders of its overseas affiliates or the related interests of such insiders.

is consistent with safe and sound banking practices to increase the amount of credit that a bank may extend to its executive officers when the credit is secured as described above. In view of the fact that such loans would continue to be subject to the prohibition against preferential lending, the Board also believes that the proposed exception would not lend itself to evasions of the law or any other abuse.

B. Refinancing of Home Mortgage Loans

Section 22(g) of the Act provides that a bank may make a loan to its executive officer, without restriction as to amount, if the loan is secured by a first lien on a dwelling that is owned by the executive officer and used by the executive officer as a residence after the loan is made. 12 U.S.C. 375a(2). Section 215.5(c)(2) of Regulation O implements this provision, and sets forth additional restrictions on such loans.

Questions have arisen as to whether the authority granted to a bank in Regulation O to finance the purchase, construction, maintenance, or improvement of a residence includes the authority to refinance an existing extension of credit that was made for such a purpose. The Board believes that such refinancings qualify as home mortgage loans not subject to the lending limit for other purpose loans to executive officers.

Under the proposal, the amount of a refinancing loan that may be included as a home mortgage loan, however, may not exceed the actual amount of the proceeds thereof that are used to repay the home mortgage loan that is refinanced or for the purposes enumerated in the regulation. Funds that are paid or made available to the executive officer in connection with a refinancing that may be used for unrestricted purposes would not be included within this category, and would be subject to the lending limit for general purpose loans.

C. Prior Approval of Home Mortgage Loans

Section 22(g) provides that the board of directors of a bank must specifically approve in advance a home mortgage loan to an executive officer. 12 U.S.C. 375a(2). Regulation O, however, does not set forth this requirement. The Board proposes to revise 12 CFR 215.5 to conform to the enabling statute.

V. Conforming Definition of "Bank"

Subpart B of Regulation O implements the reporting requirements of title VIII of FIRA, as amended by the Garn-St. Germain Depository Institutions Act of 1982, Pub. L. 97-320

(1982) and FDICIA. 12 U.S.C. 1972(2)(G). Title VIII requires disclosure of:

(1) Lending by a bank to executive officers and principal shareholders of another bank when there is a correspondent account relationship between the banks; and

(2) The opening of a correspondent account relationship between banks when there is an extension of credit by one of the banks to an executive officer or principal shareholder of the other bank.

Subpart B of Regulation O requires an executive officer or principal shareholder of a bank to report to the bank each year if the person or any related interest of the person borrowed during the prior calendar year from a correspondent bank of the bank. 12 CFR 215.22.

As originally enacted, a correspondent bank was defined in title VIII of FIRA to include a bank as defined in the Bank Holding Company Act. Title VIII was subsequently amended to include in the definition a mutual savings bank, a savings bank, and a savings association as defined in section 3 of the Federal Deposit Insurance Act. 12 U.S.C. 1971 and 1972(H). The Board proposes to amend the definition of bank in subpart B of Regulation O to conform the rule to the statutory amendments.

VI. Request for Comments

The Board requests public comment on all of the proposals described above. The Board also asks that commenters identify additional amendments to Regulation O that they believe would reduce the burden imposed by Regulation O without adversely affecting the safety and soundness of affected institutions.

In connection with previous rulemaking by the Board to adopt exceptions to the definition of extension of credit for purposes of the aggregate lending limit, the Board received three comments specifically favoring the proposal to adopt an exception to the aggregate insider lending limit for the purchase of certain consumer installment paper, two comments specifically favoring the proposal to limit the application of the tangible economic benefit rule, two comments specifically favoring the proposal to remove from the definition of extension of credit the discount of obligations sold by an insider or a related interest of an insider without recourse, and three comments specifically favoring the adoption of exceptions to the limit on lending to executive officers. The Board also received six comments favoring the

proposal to adopt the exception for certain consumer installment paper described above as part of a broader incorporation of exceptions to the definition of extension of credit contained in the National Bank Act. See 58 FR 26507 (1993). Those comments will be considered in connection with the current proposals.

VII. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. 603(b)), are contained in the supplementary information above.

The Board's proposals impose little additional reporting or recordkeeping requirements, and there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed exception to the aggregate insider lending limit, clarification of the tangible economic benefit rule, and exception to the definition of extension of credit would apply to all banks, regardless of size. These proposals should not have a negative economic impact on small institutions. Instead, they should reduce regulatory burden for banks, particularly in small communities and rural banking markets where local business people who originate consumer installment paper and other credit transactions with the general public are likely to serve as directors of a bank. In addition, the proposed exception to the aggregate lending limit should increase the ability of banks to make loans and other extensions of credit that pose little or no risk of loss, and to attract and retain outside directors. The proposed exception should also reduce the complications in maintaining dual systems for compliance with both the individual lending limit and the aggregate lending limit in Regulation O.

The proposed elimination of recordkeeping requirements for monitoring insider lending should also reduce the burden of maintaining records when those records are unnecessary or largely ineffective to ensure compliance with insider lending limits and other requirements under Regulation O. It is anticipated that the alternative recordkeeping that banks may choose to implement would be adapted to the particular circumstances

of the banks' lending practices, and therefore to be less burdensome to maintain. The amendment of the definition of bank in subpart B of Regulation O may require additional reporting by executive officers and principal shareholders of banks. These reports, however, are required by statute.

The proposed increase in the amount of pre-approved credit that may be extended under a credit card plan without constituting an extension of credit under Regulation O, and the proposed revisions to the restrictions on lending to executive officers, would apply to all banks, regardless of size. These proposals should not have a negative impact on small institutions. They should increase the ability of banks to make loans and other extensions of credit that pose little or no risk of loss, and to attract and retain executive officers. Conforming the requirements for home mortgage loans to executive officers to the enabling statute is required by such statute.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, and 5 CFR 1320.130, the proposed amendments to Regulation O will be reviewed by the Board under authority delegated by the Office of Management and Budget after consideration of the comments received during the public comment period. The Board has preliminarily determined that the revisions do not significantly increase the burden of the reporting institutions. The proposed changes are expected to reduce regulatory burden for some banks, particularly small community and rural banks, but the estimated effect on aggregate burden calculations is not deemed to be significant.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) and section 955 of HCDA, the Board is proposing to amend 12 CFR Part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(10), 1817(k)(3) and 1972(2)(F)(ix), Pub. L. 102-550, 106 Stat. 3895 (1992).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.3 is amended as follows:

a. By removing paragraph (a)(5) and redesignating paragraphs (a)(6) through (a)(8) as paragraphs (a)(5) through (a)(7);

b. By removing the word "or" at the end of paragraph (b)(4), amending paragraph (b)(5)(ii) introductory text by removing the phrase "interest-bearing overdraft credit plan of the type specified in section 215.4(e) of this part," removing the period at the end of paragraph (b)(5)(ii)(B) and adding in its place a semicolon followed by the word "or", and adding a new paragraph (b)(6), to read as follows; and

c. By revising paragraph (f), to read as follows:

§ 215.3 Extension of credit.

* * * * *

(b) * * *

(6) Indebtedness of \$5,000 or less arising by reason of an interest-bearing overdraft credit plan of the type specified in § 215.4(e) of this part.

(f) (1) *In general.* An extension of credit is considered made to an insider to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to, the insider.

(2) *Exception.* An extension of credit is not considered made to an insider under paragraph (f)(1) when the credit is extended on terms that would satisfy the standard set forth in § 215.4(a) of this part for extensions of credit to insiders and the proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services from the insider.

3. Section 215.4 is amended by redesignating paragraph (d)(3)(iv) as paragraph (d)(3)(v), and adding a new paragraph (d)(3)(iv) to read as follows:

§ 215.4 General prohibitions.

* * * * *

(iv) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, if—

(A) The bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate;

(B) An officer of the bank designated for that purpose by the board of directors of the bank certifies in writing

that the bank is relying primarily upon the responsibility of each maker for payment of the obligation and not upon any endorsement or guarantee by the insider; and

(C) The maker of the instrument is not an insider.

4. Section 215.5 is amended by revising paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(4), adding a new paragraph (c)(3), and by revising paragraph (c)(4), to read as follows:

§ 215.5 Additional restrictions on loans to executive officers of member banks.

* * * * *

(c) * * *

(2) with the specific prior approval of the board of directors, in any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided—

(i) the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer, and

(ii) in the case of a refinancing, the amount thereof does not exceed the actual amount of the proceeds thereof used to repay the original extension of credit made under this paragraph (c)(2) or for any of the purposes enumerated in this paragraph (c)(2);

(3) in any amount, if the extension of credit is secured in a manner described in paragraphs (d)(3)(i) through (iii) of § 215.4 of this part; and

(4) for any other purpose not specified in paragraphs (c)(1) through (c)(3) of this section, if the aggregate amount of extensions of credit to that executive officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's unimpaired capital and unimpaired surplus or \$25,000, but in no event more than \$100,000.

5. Section 215.8 is revised to read as follows:

§ 215.8 Records of member banks.

(a) *In general.* Each member bank shall maintain records necessary for compliance with the requirements of this part.

(b) *Methods of recordkeeping.* Acceptable methods of complying with paragraph (a) are:

(1) Maintaining records that identify—

(i) Each executive officer, director, or principal shareholder of the member bank and each related interest of such person; and

(ii) The amount and terms of each extension of credit by the member bank

to such person and any related interests of that person; or

(2) As part of each extension of credit—

(i) Requiring that the borrower indicate whether the borrower is, or is a related interest of, an executive officer, director, or principal shareholder of the member bank; and

(ii) Maintaining records that identify the amount and terms of each extension of credit by the member bank to borrowers so identifying themselves; or

(3) Employing any other method that ensures compliance with the requirements of this part, given the particular circumstances of the member bank.

6. Section 215.21 is amended by replacing the word "1841(c)" in paragraph (a) with the words "1971 and 1972".

By order of the Board of Governors of the Federal Reserve System, September 3, 1993.
William W. Wiles,
Secretary of the Board.

[FR Doc. 93-21966 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-93-15]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking, this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received November 8, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on September 1, 1993.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27064

Petitioner: North Central Airways, Inc.
Regulations Affected: 14 CFR 61.71(b)
Description of Rulechange Sought: To

allow graduates to apply for a certificate within 180 days after graduation from an appropriate source given by a part 141 pilot school.
Petitioner's Reason for the Request: The petitioner feels that for operational and economical reasons, ground training at the part 141 flight school is frequently conducted separately from flight training and results in students completing the ground training, with subsequent FAA written test, many months ahead of the flight training. The requested rule change will provide relief from financial and weather-related pressures for part 141 graduates.

Docket No.: 27399

Petitioner: Richardson, Berlin & Morcillo
Regulations Affected: 14 CFR 61.77, 63.23, 91.60, 129.13, and 129.15

Description of Rulechange Sought: To require that every aircraft listed on a carrier's operations specifications be for the exclusive use of that carrier and not be listed on the operations specifications of any other carrier; prohibit the practice of leasing flight crew members, except in the context of the wet leases (where a carrier

leases both an aircraft and its flight crew members from another certified carrier) or require leasing agents who lease flight crew members to register with the FAA and to file appropriate documents reflecting such activities to provide a mechanism for the FAA to verify that the leasing agent has ensured the qualification and currency of all leased flight crew members; impose upon foreign air carriers directly a requirement that they only use duly licensed or certified flight crew members; and require that flight crew members seeking special purpose certificates may not simultaneously hold U.S. aviation licenses.

Petitioner's Reason for the Request: The petitioners feel that the disparate regulatory oversight, accorded some foreign air carriers serving U.S. markets under part 129, poses a serious threat to the lives and safety of citizens who live and work in southern Florida. Additionally, such unequal treatment also places the petitioners at a distinct competitive disadvantage, relative to those operators that function outside the regulatory framework of part 121.

[FR Doc. 93-21969 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 93-CE-46-AD]

Airworthiness Directives: Allied Signal Aerospace Company, Air Transport Avionics (Formerly Bendix/King Air Transport Avionics Division) Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Allied Signal Aerospace Company, Air Transport Avionics (Allied Signal) Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. The proposed action would require replacing the existing TCAS II processor with a new processor that incorporates updated computer logic. The development of candidate enhancements to TCAS II logic that improves its utility and increases its overall operational acceptance prompted the proposed action. The actions specified by the proposed AD are intended to prevent

collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-46-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. A.E. Clark, Manager, Systems and Equipment Branch, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3020; Facsimile (404) 991-3606.

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 that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-CE-46-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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-46-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Traffic Alert and Collision Avoidance System (TCAS) is a system that was developed by the FAA and the aviation industry as a way of reducing the risks of mid-air collisions between aircraft. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of the traffic relative to the TCAS equipped aircraft, which assists the pilot in visually acquiring intruding aircraft. An RA indicates the vertical rate that must be achieved or the recommended escape maneuver needed to maintain safe vertical separation from threatening aircraft.

Public Law (Pub. L.) 100-23 currently requires installing TCAS II on aircraft operated under part 121 of the Federal Aviation Regulations (FAR). In addition, Public Law 101-236 establishes a phased implementation schedule for installing TCAS II equipment on aircraft with more than 30 passenger seats. This law also requires that the FAA conduct, in cooperation with the airlines and industry, a TCAS Transition Program (TTP) when TCAS II implementation was under way.

The latest TTP report, which covers approximately 4,500 aircraft that incorporate TCAS II avionics with a total utilization of about 10,000 flight hours, indicates that the aviation community, for the most part, is very positive about the features and safety of TCAS II. The report also indicates that incompatibilities between TCAS and the existing air traffic control (ATC) system exist that prevents total acceptance of TCAS. The TTP report identifies enhancements to the TCAS logic that would improve its utility and increase its overall operational acceptance.

This new logic package, version 6.04A to the RTCA/DO-185, Minimum Operational Performance Standard (MOPS) and MITRE utter F046-L-0056, dated July 20, 1993 (hereon referred to as "Change 6.04A"), was developed to reduce the number of low altitude alerts, high vertical rate encounter alerts, and advisories.

The FAA has identified certain Allied Signal TCAS II processors as equipment that needs "Change 6.04A" incorporated in order to prevent collisions or near misses caused by incompatibility

between the TCAS II processors and the current air traffic control system.

Since an unsafe condition has been identified that is likely to exist or develop in other Allied Signal TCAS II processors of the same type design that are installed on aircraft, the proposed AD would require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. These Allied Signal TCAS II processors are installed on, but not limited to the following airplanes:

- Airbus Industries Models A300, B4-103, and B4-203 airplanes, and A310, 200, and 300 series airplanes;
- Beech Model 65-A90 airplanes;
- Boeing 727-100, 727-200, 737-200, 737-300, 737-400, 737-500, 747-100, 747-200, 747-300, 747SP, 757-200, 767-200, and 767-300 Series airplanes;
- deHavilland Model DHC-8-100 airplanes;
- Fokker Models F.28 Mark 1000 and Mark 4000 airplanes;
- General Dynamics Models Convair 340 and 440 airplanes;
- Gulfstream Models G-159 and G-IV airplanes;
- Lockheed L1011 series airplanes; and
- McDonnell Douglas DC-8-60, DC-9-31, DC-9-51, DC-10-30, MD-11, and MD-80 series airplanes.

The condition specified by the proposed AD is not caused by actual hours time-in-service (TIS) of the aircraft that the equipment is installed in. The need for the computer logic modification has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 3,000 TCAS II processors in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per processor to accomplish the proposed action, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$165,000. These figures take into account that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this proposed AD.

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 action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [AMENDED]

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

Allied Signal Aerospace Company, Air Transport Avionics (formerly Bendix/King Air Transport Avionics Division); Docket No. 93-CE-46-AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

- Beech Model 65-A90 airplanes;
- Boeing 727-100, 727-200, 737-200, 737-300, 737-400, 737-500, 747-100, 747-200, 747-300, 747SP, 757-200, 767-200, and 767-300 Series airplanes;
- deHavilland Model DHC-8-100 airplanes;
- Fokker Models F.28 Mark 1000 and Mark 4000 airplanes;
- General Dynamics Models Convair 340 and 440 airplanes;
- Gulfstream Models G-159 and G-IV airplanes;
- Lockheed L1011 series airplanes; and

McDonnell Douglas—DC-8-60, DC-9-31, DC-9-51, DC-10-30, MD-11, and MD-80 series airplanes.

Compliance: Prior to December 30, 1993, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
-0102 or -0107	-0108
-0203 or -0207	-0208
-0301, -0302, or -0307	-0308
-0402, -0405, or -0407	-0408
-0504 or -0507	-0508
-0606 or -0607	-0608
-8101	-0108

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(d) Information that relates to the proposed AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 2, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-22003 Filed 9-3-93; 4:23 pm]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-68-AD]

Airworthiness Directives; Honeywell Traffic Alert and Collision Avoidance System II Computer Units, as Installed on Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Honeywell Traffic Alert and Collision Avoidance System II (TCAS II) computer units installed on various transport category airplanes. This proposal would require replacing certain TCAS II computer units with new units that incorporate updated collision avoidance system (CAS) logic; and modifying the computer surveillance logic. This proposal is prompted by the development of candidate enhancements to TCAS II logic that will improve its utility and increase its overall operational acceptance. The actions specified by the proposed AD are intended to prevent reduced maneuverability of the airplane.

DATES: Comments must be received by October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-68-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Honeywell Inc., Commercial Flight Systems Group, Air Transport Systems Division, P.O. Box 21111, Phoenix, AZ 85036, Attn: Customer Services. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5351; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-68-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-68-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Traffic Alert and Collision Avoidance System (TCAS II) is a system that was developed by the FAA and members of aviation industry for the purpose of reducing the risks of mid-air collisions between aircraft equipped with that system. TCAS II has been operated for approximately 10 million flight hours in both U.S. and foreign airspace. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of traffic relative to an aircraft equipped with TCAS II, which assists the pilot in visually locating intruding aircraft. An RA indicates the vertical rate that must be achieved or the recommended escape maneuver needed to maintain safe separation from threatening aircraft.

Public Law (Pub. L.) 100-23 currently requires that TCAS II systems be installed on aircraft operated under part 121 of the Federal Aviation Regulations (FAR). Additionally, Public Law 101-236 establishes a phased implementation schedule for installing TCAS II equipment on aircraft having more than 30 passenger seats. On April

3, 1990, the FAA issued a final rule amending parts 121, 125, and 129 of the FAR (Docket No. 25954; amendments 121-217, 125-14, and 129-21; 55 FR 13242, April 9, 1990) that requires implementation of TCAS II systems on 100 percent of all affected U.S.-operated airplanes by December 30, 1993.

Public Law 101-236 also requires that the FAA conduct, in conjunction with the airlines and aviation industry, a TCAS Transition Program (TTP) when TCAS II implementation is under way. The latest TTP report, which will be included in the Rules Docket, covers approximately 4,500 aircraft, including air carrier turbojets/turboprops and approximately 1,000 corporate aircraft, that operate TCAS II avionics. The TTP report indicates that the majority of the aviation community considers the features and safety of TCAS II to be a positive step in reducing the likelihood of mid-air collisions.

The TTP report also indicates that there are operational incompatibilities between certain TCAS II units and the existing air traffic control (ATC) system that have prevented the aviation community from totally accepting TCAS II. The TTP report includes analyses of many of these operational events and identifies candidate enhancements to TCAS II logic that would improve its utility and increase its overall operational acceptance.

A new collision avoidance system (CAS) logic package, written as version 6.04A to Radio Technical Commission for Aeronautics Document 185 (RTCA/DO-185, Minimum Operational Performance Standard (MOPS)), and MITRE letter F046-L-0056, dated July 20, 1993, has been developed to reduce the number of low altitude alerts, high vertical rate encounter alerts, and advisories issued as a result of corrupt sensor inputs.

In addition, the FAA has received a report that, during three of four recent aircraft altitude crossing maneuvers, Honeywell TCAS II computer units, part numbers 4066010-901 and -902, did not convert (round up/down) the 25-foot incremental Mode C output to the nearest 100-foot increment before processing it through the vertical tracker. Subsequent simulation of these events disclosed that with 25-foot input the vertical tracker was unable to properly track high vertical rates (i.e., at 1,500 to 3,000 feet per minute, the output of the vertical tracker varied \pm 600 feet about the input rate). The TCAS II vertical tracker was designed to accommodate Mode C altitude input of 100-foot increments.

The FAA has also received results of a recent flight evaluation of the

Honeywell TCAS II, which revealed that the system failed to be tracked and coordinated by an intruding aircraft when the Mode S transponder CA field was set at CA=7. Consequently, when an aircraft equipped with Honeywell TCAS II encounters another aircraft equipped with TCAS II avionics having a transponder reporting of CA=7, the system that detects the threat issues an RA and reports incorrectly that it is involved in a TCAS-to-TCAS coordinated encounter. This condition is specific to Honeywell TCAS II computer units, part numbers 4066010-901, -902, and -903.

The conditions described previously, if not corrected, could also result in reduced maneuverability of the airplane.

The FAA has determined that modification of the computer surveillance logic on all Honeywell TCAS II computer units is necessary to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require replacing all existing Honeywell TCAS II computer units with new units (identified as Version 6.04A) that incorporate updated CAS logic; and modification of the computer surveillance logic to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7. The actions would be required to be accomplished in accordance with a method approved by the FAA.

The proposed actions would be required to be accomplished by December 30, 1993. This compliance time was established to coincide with amendments to parts 121, 125, and 129 of the FAR, described previously, which require implementation of TCAS II systems on 100% of affected airplanes by December 30, 1993.

The affected Honeywell TCAS II computer units are installed on, but not limited to, the following transport category airplanes:

1. Airbus Industrie Model A310-200, A310-300, A320-200, and A340 series airplanes;
2. Boeing Model 727-100 and -200; 737-100, -200, -300, -400 and -500; 747-100, -200, -300, -400 and 747SP; 757-200; and 767-200 and -300 series airplanes;

3. Cessna Citation Model C550 and C560 series airplanes, and Cessna Citation III series airplanes;

4. Canadair Challenger Model CL-600-2B16 and -2A12 series airplanes;

5. British Aerospace Model 125-800A;

6. Gulfstream Model GII, GIIIB, GIII, and GIV series airplanes;

7. Lockheed Model L-1011 series airplanes; and

8. McDonnell Douglas Model DC-9-10, -30, -40, and -50; DC-10-10, -30, and -40; and DC-9-80 series airplanes.

The FAA plans similar rulemaking actions to address affected Allied Signal Aerospace Company, Air Transport Avionics (formerly Bendix/King Air Transport Avionics Division), and Rockwell International, Collins Air Transport Division, TCAS II computer units.

There are approximately 2,700 transport category airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,150 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$189,750, or \$165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket

at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell: Docket 93-NM-68-AD.

Applicability: Traffic Alert and Collision Avoidance System (TCAS) II computer units; part numbers 4066010-901, -902, and -903; as installed on, but not limited to, the following airplanes, certificated in any category:

Airbus Industrie Model A310-200, A310-300, A320-200, and A340 series airplanes; Boeing Model 727-100 and -200; 737-100, -200, -300, and -400; 747-100, -200, -300, -400 and 747SP; 757-200; and 767-200 and -300 series airplanes;

Cessna Citation Model C550 and C560 series airplanes, and Cessna Citation III series airplanes;

Canadair Challenger Model CL-600-2B16 and -2A12 series airplanes;

British Aerospace Model 125-800A; Gulfstream Model GII, GIIIB, GIII, and GIV series airplanes;

Lockheed Model L-1011 series airplanes; and

McDonnell Douglas Model DC-9-10, -30, -40, and -50; DC-10-10, -30, and -40; and DC-9-80 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced maneuverability of the airplane, accomplish the following:

(a) Before December 30, 1993, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(1) Remove existing Honeywell TCAS II computer units, part numbers 4066010-901, -902, and -903, and replace those units with new units that incorporate updated collision avoidance system (CAS) logic, identified as Version 6.04A to Radio Technical Commission for Aeronautics Document 185 [RTCA/DO-185, Minimum Operational Performance Standard (MOPS)], and MITRE letter F046-L-0056, dated July 20, 1993.

(2) Modify the computer surveillance logic on Honeywell TCAS II computer units, part numbers 4066010-901, -902, and -903, to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7.

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

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

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

Issued in Renton, Washington, on September 2, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-22001 Filed 9-3-93; 4:23 pm]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-CE-47-AD]

Airworthiness Directives: Rockwell International, Collins Air Transport Division, Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rockwell International, Collins Air Transport Division (Collins), Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. The proposed action would require replacing the existing TCAS II processor with a new processor that incorporates updated computer logic. Reports of these TCAS II processors displaying low altitude alerts, high vertical rate encounter alerts, and advisories prompted the proposed action. The actions specified by the proposed AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-47-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4134; Facsimile (316) 946-4407.

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 that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-CE-47-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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-CE-47-AD, room

1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Traffic Alert and Collision Avoidance System (TCAS) is a system that was developed by the FAA and the aviation industry as a way of reducing the risks of mid-air collisions between aircraft. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of another aircraft in the immediate vicinity of the TCAS equipped aircraft, which assists the pilot in visually acquiring intruding aircraft. An RA indicates the vertical flight path that must be corrected or the recommended escape maneuver needed to maintain safe vertical separation from threatening aircraft.

Public Law (Pub. L.) 100-23 currently requires installing TCAS II on aircraft operated under part 121 of the Federal Aviation Regulations (FAR). In addition, Public Law 101-236 establishes a phased implementation schedule for installing TCAS II equipment on aircraft with more than 30 passenger seats. This law also requires that the FAA conduct, in cooperation with the airlines and industry, a TCAS Transition Program (TTP) when TCAS II implementation was under way.

The latest TTP report, which covers approximately 4,500 aircraft that incorporate TCAS II avionics with a total utilization of about 10,000 flight hours, indicates that the aviation community, for the most part, is very positive about the features and safety of TCAS II. The report also indicates that incompatibilities between TCAS and the existing air traffic control (ATC) system exist that prevents total acceptance of TCAS. The TTP report identifies enhancements to the TCAS logic that would improve its utility and increase its overall operational acceptance.

This new logic package, version 6.04A to the RTCA/DO-185, Minimum Operational Performance Standard (MOPS) and MITRE letter F046-L-0056, dated July 20, 1993 (hereon referred to as "Change 6.04A"), was developed to reduce the number of low altitude alerts, high vertical rate encounter alerts, and advisories.

The FAA has identified certain Collins TCAS II processors as equipment that needs "Change 6.04A" incorporated in order to prevent the inability of the system's 100-foot vertical tracker to properly process an intruder's Mode C 25-foot increment altitude report. Recent FAA-investigation reveals that these systems may not convert (round up/down) the 25-foot incremental Mode C output to

the nearest 100-foot increment before processing it through the vertical tracker. Simulating this situation shows that there is an inability of the vertical tracker, with the 25-foot input, to properly track high vertical rates, i.e., at 1,500 to 3,000 feet/minute—the output of the vertical tracker would vary +/- 600 feet about the input rate. The TCAS II vertical tracker was designed to accommodate Mode C altitude input of 100-foot increments.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) TCAS manufacturers that use 25-foot altitude data in the non-linear vertical tracker should incorporate "Change 6.04A" to the existing TCAS II computer logic; and (2) AD action should be taken to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

Since an unsafe condition has been identified that is likely to exist or develop in other Collins TCAS II processors of the same type design that are installed on aircraft, the proposed AD would require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. The Collins TCAS II processors are installed on, but not limited to the following:

General Aviation Airplanes

Aerospatiale Models ATR-42 and ATR-72 airplanes;
Astra Model 1125 airplanes;
BAC Model 1-11 airplanes;
British Aerospace Model 125-800 airplanes;
Beech Models C90A, B200, 300, 350, and 400A airplanes;
Canadair Models CL-600, CL-600-2B16, CL-601, CL-601-1A, and CL-601-3A airplanes;
Learjet Models 31, 55, and 60 airplanes;
Falcon Models 20, 50, 200, and 900 airplanes
Gulfstream Models G2 and G3 airplanes;
British Aerospace Models HS-125-700 airplanes;
SAAB Model 340B airplanes; and
Sabreliner Model 60 airplanes.

Air Transport Airplanes

Airbus Industries Models A300B2, A-300B, and A-320 airplanes;
British Aerospace Models ATP and 146 airplanes;

Boeing Models 707, 727, 737, 747, 757, and 767 airplanes;
 British Aerospace/Aerospatiale Model Concorde SST airplanes;
 de Havilland DHC-7 and DHC-8 series airplanes;
 McDonnell Douglas Models DC-8, DC-9, and DC-10, MD-80, and MD-11 airplanes;
 Ilyushin Model IL-86 airplanes;
 Lockheed Model L-1011 airplanes;
 SAAB Models SF340A and SF340B airplanes; and
 Shorts Models SD3-60-300 airplanes.

The condition specified by the proposed AD is not caused by actual hours time-in-service (TIS) of the aircraft that the equipment is installed in. The need for the computer logic modification has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 1,995 TCAS II processors in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per processor (1 workhour for installation and 4 workhours for operational testing) to accomplish the proposed action, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$548,625. These figures take into account that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this proposed AD.

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 action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rockwell International, Collins Air Transport Division: Docket No. 93-CE-47-AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

General Aviation Airplanes

- Aerospatiale Models ATR-42 and ATR-72 airplanes;
- Astra Model 1125 airplanes;
- BAC Model 1-11 airplanes;
- British Aerospace Model 125-800 airplanes;
- Beech Models C90A, B200, 300, 350, and 400A airplanes;
- Canadair Models CL-600, CL-600-2B16, CL-601, CL-601-1A, and CL-601-3A airplanes;
- Learjet Models 31, 55, and 60 airplanes;
- Falcon Models 20, 50, 200, and 900 airplanes;
- Gulfstream Models G2 and G3 airplanes;
- British Aerospace Models HS-125-700 airplanes;
- SAAB Model 340B airplanes; and
- Sabreliner Model 60 airplanes.

Air Transport Airplanes

- Airbus Industries Models A300B2, A-300B, and A-320 airplanes;
- British Aerospace Models ATP and 146 airplanes;
- Boeing Models 707, 727, 737, 747, 757, and 767 airplanes;
- British Aerospace/Aerospatiale Model Concorde SST airplanes;
- de Havilland DHC-7 and DHC-8 series airplanes;
- McDonnell Douglas Models DC-8, DC-9, and DC-10, MD-80, and MD-11 airplanes;
- Ilyushin Model IL-86 airplanes;
- Lockheed Model L-1011 airplanes;
- SAAB Models SF340A and SF340B airplanes; and

Shorts Models SD3-60-300 airplanes.

Compliance: Prior to December 30, 1993, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
-012	-020
-112	-120
-014	-320
-612	-620

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(d) Information that relates to the proposed AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 2, 1993.

John R. Colomy,
Acting Manager, Small Airplane Directorate, Aircraft Certification Service.
 [FR Doc. 93-22002 Filed 9-3-93; 4:23 pm]
 BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 93-ASO-10]

Proposed Establishment of Class E Airspace; Adel, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Adel, Georgia. A Standard Instrument Approach Procedure (SIAP) for Runway 23 at the Cook County Airport has

recently been developed and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations at the airport. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace" for airspace extending upward from 700 feet or more above ground level. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP. If adopted, the operating status of the airport would change from VFR operations to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: November 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration,
Docket No. 93-ASO-10, Manager,
System Management Branch, ASO-530,
P.O. Box 20636, Atlanta, Georgia 30320.

Counsel for Southern Region, room 652,
3400 Norman Berry Drive, East Point,
Georgia 30344; telephone (404) 763-7204.

FOR FURTHER INFORMATION CONTACT:
Robert L. Shipp, Jr., Airspace Section,
System Management Branch, Air Traffic
Division, Federal Aviation
Administration, P.O. Box 20636,
Atlanta, Georgia 30320; telephone (404)
763-7646.

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 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 on which the following statement is made: "Comments to Airspace Docket No. 93-ASO-10." The postcard will be date/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 Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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 Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

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, which 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 Adel, Georgia. A SIAP based on the Moultrie Very High Frequency Omnidirectional Range (VOR) has been established to serve the Cook County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain IFR operations at the airport. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR/DME-A SIAP at Cook County Airport.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth 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 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order. If adopted, the operating status of the airport would

change from VFR operations to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this proposed 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 "major rule" under Executive Order 12291; (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 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).

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 the Federal Aviation Administration Order 7400.9A, Air Space Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *
ASO GA E5 Adel, GA [New]
Cook County Airport, GA
(lat. 31°08'26" N, long. 83°27'11" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cook County Airport.

* * * * *
Issued in East Point, Georgia, on August 25, 1993.

Michael J. Powderly,
*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 93-21971 Filed 9-8-93; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ANM-21]

Proposed Alteration of Jet Route J-151; WA**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) that proposed to extend the route segment of Jet Route J-151 from Whitehall, MT, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) direct to Spokane, WA, VORTAC. During a flight check of the proposed jet route, the measured signal strength did not satisfy the requirements of an expanded service volume between the navigational aids.

DATES: The withdrawal is effective September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On January 4, 1993, a Notice of Proposed Rulemaking was published in the Federal Register to amend 14 CFR part 71 of the Federal Aviation Regulations to extend the route segment of Jet Route J-151 from Whitehall, MT, VORTAC direct to Spokane, WA, VORTAC (58 FR 34). This action was proposed to enhance traffic flow and reduce controller workload. During a recent flight check of the proposed jet route, the measured signal strength did not satisfy the requirements of an expanded service volume between the two navigational aids. Therefore, the FAA has decided to withdraw this proposal.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Proposed Rule

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 92-ANM-21, as published in the Federal Register on January 4, 1993 (58 FE 34), is hereby withdrawn.

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.

Issued in Washington, DC, on August 30, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-21974 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 175****Receipt of Domestic Interested Party Petition Concerning Country of Origin Marking for Frozen Produce**

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Receipt of Domestic Interested Party Petition; Solicitation of Comments.

SUMMARY: Customs has received a petition filed on behalf of domestic interested parties concerning the country of origin marking requirements for retail packages containing imported frozen produce. Under current practice, such packages are considered to comply with the marking requirements if the marking appears on the back side of the package in close proximity to nutritional and dietary information. The petition requests Customs to adopt a new rule under which packages of imported frozen produce would be required to show country of origin marking on the front side of the package to be considered as marked in a conspicuous place. Public comment is solicited regarding the application of the marking requirements to imported frozen produce.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings, 1301 Constitution Avenue NW. (Franklin Court), Washington, DC 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482-7010.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and part 175, Customs Regulations (19 CFR

part 175), a domestic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced or wholesaled by the domestic interested party. This document provides notice that domestic interested parties are challenging a marking decision made by Customs.

The petitioners are Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc., California packers of produce grown domestically. Their petition is supported by the International Brotherhood of Teamsters on behalf of its Local 912. All three entities are domestic interested parties within the meaning of section 516(a)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1516(a)(2)).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin shall be marked in a conspicuous place with the English name of the country of origin. The country of origin marking requirements and exceptions of 19 U.S.C. 1304 are implemented by part 134, Customs Regulations (19 CFR part 134).

The petitioners contend that packages of imported frozen produce should be required to show country of origin marking on the front side of a package to be considered as marked in a conspicuous place.

Customs presently treats frozen produce as marked in a conspicuous place if the marking appears on the back side of the package in close proximity to nutritional and directional information. Also, marking which appears on the side panels of a box may be treated as appearing in a conspicuous place under appropriate circumstances.

Relatedly, the petitioners ask Customs to require that marking appear on these products in a size and type style or color of lettering which would make the marking conspicuous. At this time, there are no particular Customs requirements in this regard for packaged frozen produce beyond the general necessity to mark the article in a conspicuous place and as legibly, indelibly, and permanently as the nature of the article will permit. We invite comments from interested persons concerning the extent to which lettering of specified sizes, colors, and type styles is needed on packaged frozen produce to assure that its country of origin is indicated to the ultimate purchaser.

Counsel for the domestic packers first raised the question of whether [the front or] the back side of a produce package

was a conspicuous place for country of origin marking by seeking a ruling from Customs in 1988. A ruling was requested to the effect that packaged imported frozen produce was not marked in a conspicuous place unless the marking appeared on the front side of such packaging in prominent lettering. Customs responded by issuing a determination that the sample packages submitted by the domestic packers were legally marked by names and words which appeared on the back side of the packaging in close proximity to nutritional information required under regulations of the Food and Drug Administration (FDA). HRL 731830 (November 21, 1988).

The packers appealed this determination to the Court of International Trade. In *Norcal/Crosetti Foods, Inc. et al. v. U.S. Customs Service*, 758 F. Supp. 729 (1991), (Norcal I), the CIT ruled, based upon certain findings, that frozen produce is not marked in a conspicuous place unless marked on the front side of the package. At the direction of the Court of International Trade, Customs issued T.D. 91-48, 56 Fed. Reg. 24115 (May 28, 1991), requiring that packages of frozen produce be so marked.

On appeal by the government, the Court of Appeals for the Federal Circuit ruled in *Norcal*, 963 F.2d 356 (1992) (Norcal II), that the packers' claims were not properly before the Court of International Trade under the so-called "residual" jurisdiction provision, 28 U.S.C. 1581(i). Instead, the claim would properly have been before the CIT under 28 U.S.C. 1581(b) after exhaustion before Customs of the administrative domestic interested party petition procedures of 19 U.S.C. 1516. The Appeals Court's opinion affirmed that issues of proper country of origin marking under section 304 of the Tariff Act of 1930 are proper subjects to be addressed under section 516 of the Tariff Act of 1930.

In view of Norcal II and the subsequent action of the trial court in Norcal I to vacate its original ruling and remand to Customs, Customs has not enforced the marking requirement for imported frozen produce set forth in T.D. 91-48. Customs regards the findings of HRL 731830 as having been effectively reinstated, such that marking on the back panel of a package of frozen produce is an acceptable practice in the absence of any other factors which might require more extensive disclosure.

The instant petition requests that Customs reconsider and reject the position stated in HRL 731830, adopt the findings made by the trial court in

Norcal I, and commence enforcement of the requirements for marking set forth in T.D. 91-48.

The stated basis for the petitioners' request to change the ruling is as follows: (1) Current marking of frozen produce is found "buried in a sea of cooking instructions"; (2) As displayed in retail frozen food display cases, only the front side of packaged frozen produce is visible, and it is not practical for the consumer to turn it over to ascertain the country of origin; (3) Large scale importation of frozen produce is a recent phenomenon, but there is inherent confusion in that the packaging has not changed; and (4) various products are sold in the U.S. whose packaging is marked confusingly or illegibly, or which implies domestic origin.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4 p.m. at the Regulations Branch, suite 4000, Franklin Court, 1099 14th Street, NW., Washington, DC.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal drafter of this document was Robert Cascardo, Value and Marking Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 19, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93-22004 Filed 9-8-93; 8:45 am]

BILLING CODE 4420-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-4726-5]

Public Meeting of the Proposed Small Non-Road Engine Negotiated Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: The Environmental Protection Agency is announcing a meeting of the proposed Small non-Road Engine Negotiated Rulemaking committee. The meeting is open to the public without advance registration.

During this meeting the group will: Review and adopt organizational protocols for the functioning of the committee; finalize committee membership; participate in a presentation by the states on State Implementation Plans; identify and prioritize negotiation issues; identify and establish workgroups to address issues; identify data needs; and schedule future meetings.

DATES: The meeting will be held on September 29, 1993, from 10 a.m. to 5 p.m., and on September 30, 1993 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Ann Arbor Hilton Hotel, 610 Hilton Boulevard, Ann Arbor, MI 48108, (313) 761-7800.

FOR FURTHER INFORMATION CONTACT: Persons needing further information concerning this committee and the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd. Ann Arbor, MI 48015, (313) 668-4344. Persons needing further information on procedural or logistical matters should call the Committee's facilitator, Lucy Moore, Western Network, 616 Don Gaspar, Santa Fe, NM, 87501, (505) 982-9805.

Dated: September 1, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93-21982 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-60-M

40 CFR Part 52

[IL15-5-6014; FRL-4727-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule; withdrawal.

SUMMARY: In a November 13, 1992 proposed rule, the United States Environmental Protection Agency (USEPA) proposed to approve a revision to Illinois' State Implementation Plan (SIP) for ozone. The purpose of this revision was to change the Volatile Organic Matter emission limits applicable to a facility in Richland County, Illinois operated by Roadmaster Corporation. The Illinois Environmental Protection Agency withdrew its underlying SIP revision request for the Roadmaster Corporation on June 29, 1993. Thus, USEPA's November 13, 1992, proposal is moot. USEPA is withdrawing this proposed rulemaking and will take no further action on the SIP revision because the State has formally withdrawn the request.

DATES: This withdrawal of proposed rulemaking becomes effective October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Regulation Development Section, Regulation Development Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6069.

List of Subjects in 40 CFR Part 51

Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 9, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93-21980 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[IN21-1-5723; FRL-4727-5]

Basic and Enhanced Vehicle Inspection and Maintenance Plan; Indiana

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to disapprove a revision to the Indiana State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standard for ozone. This revision was intended to provide for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting the requirements of U.S. EPA regulations, published in the *Federal Register* on November 5, 1992, concerning vehicle I/M programs (I/M Regulation) for the Lake, Porter, Clark,

and Floyd Counties ozone nonattainment areas. The revision was submitted on December 2, 1992 and consisted of a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of U.S. EPA's I/M regulations and a schedule for implementation of the required program. U.S. EPA is proposing to disapprove the submittal because important milestones have been missed pertaining to the development and adoption of necessary rulemaking for the I/M program and, therefore, U.S. EPA believes the State cannot meet its commitment to submit a full revised I/M SIP by November 15, 1993. However, this action also proposes to approve the submittal in the alternative if a full SIP revision is submitted by November 15, 1993.

DATES: Comments on this proposed action must be received in writing on or before October 12, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061.

Anyone wishing to come to Region 5 offices should first contact Francisco J. Acevedo.

SUPPLEMENTARY INFORMATION:**I. Clean Air Act Requirements**

The Clean Air Act, as amended in 1990, (the Act) requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by

the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past U.S. EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a basic I/M program, regardless of previous requirements.

In addition, Congress directed U.S. EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. All areas required by the Act to have an I/M program were to incorporate this guidance into the SIP. Areas classified as "serious" or worse ozone nonattainment areas with populations of above 200,000 and CO nonattainment areas with design classifications above 12.7 ppm and populations of 200,000 or more, in addition to metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet U.S. EPA guidance for "enhanced" I/M programs. These areas were required to submit a SIP revision to incorporate an enhanced I/M program by November 15, 1992.

In the State of Indiana a basic I/M program meeting all the requirements of the I/M rule is required in Clark and Floyd Counties. An enhanced I/M program is required in Lake and Porter Counties.

II. I/M Regulation Requirements

On November 5, 1992 (57 FR 52950) U.S. EPA published a final regulation establishing the I/M requirements, pursuant to section 182 of the Act. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires, among other things, that each State that is required to implement an I/M program must submit by November 15, 1992, a SIP revision including two elements: (1) A commitment from the Governor or his/her designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation; and (2) a schedule of implementation. In addition, the commitment must provide interim milestones that the State must meet with regard to the timely implementation of any necessary legislation and regulations required to have full legal authority to implement the program. Failure by the State to

meet any of the above mentioned requirements is grounds for U.S. EPA to disapprove the commitment.

In cases where the committal SIPs are considered complete, U.S. EPA believes that conditional approval of I/M committal SIPs is appropriate because the States could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. U.S. EPA does believe that States can adopt revised I/M program plans within one year of U.S. EPA's final rule. As a condition of U.S. EPA's proposed approval of such committal SIPs, the I/M regulation requires that by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. A proposed conditional approval should not be interpreted as an approval of the program design features as described in a State's commitment. In order to be considered complete and fully approvable, the November 15, 1993 submittal must include an analysis of the program using the most current U.S. EPA mobile source emission model demonstrating that the program meets the applicable performance standard, as well as other features identified in the statute and regulations.

III. State Submittal

The State of Indiana submitted a committal SIP on December 2, 1992. A public hearing on this submittal was held by the State on October 22, 1992, in Gary, Indiana. The submittal includes a commitment to the timely adoption and implementation of an I/M program in the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas meeting all the requirements of the I/M regulation and the Act by November 15, 1993, and a schedule of implementation. A more detailed analysis of the State's submittal is contained in U.S. EPA's technical support document dated May 4, 1993, which is available from the Region 5 office listed above.

IV. Statement of Disapproval

Under the authority of the Governor, the Commissioner of the Indiana Department of Environmental Management submitted a SIP revision to satisfy certain requirements of the I/M regulation to the United States Environmental Protection Agency on December 2, 1992. U.S. EPA has reviewed this submittal and proposes to disapprove the commitment based on

the failure by the State to meet the commitment and schedule contained in the SIP submittal pertaining to the adoption of necessary authority to implement I/M requirements during the 1993 Indiana General Legislative session. On June 30, 1993, the Indiana legislature adjourned without taking necessary action to allow implementation of the I/M provisions mandated in the Clean Air Act and the I/M rule for Lake and Porter Counties. Failure to provide necessary authority prevents the State from submitting a complete SIP revision containing all the required elements of the program by November 15, 1993.

On August 17, 1993, U.S. EPA sent a letter to Governor Bayh of Indiana and to the Federal Highway Administration advising them that U.S. EPA has decided to exercise its discretionary authority under section 110(m) of the Act to impose sanctions at any time once a finding of SIP deficiency is made. Because of the failure of the Legislature to provide necessary authority to implement an enhanced I/M program in Lake and Porter Counties, it is U.S. EPA's intent to publish a proposed rule in the *Federal Register* in the near future proposing to limit certain Federal highway funding assistance statewide and to impose 2:1 emissions offset growth limitations for new and modified major stationary sources of volatile organic compounds and oxides of nitrogen in the ozone nonattainment counties of Lake, Porter, Clark, Floyd, Marion, St. Joseph, Elkhart, and Vanderburgh Counties. A public comment period of at least 30 days and an opportunity for public hearing(s) will be provided to solicit comments on the proposed imposition of sanctions.

If the State provides the necessary authority and meets the other applicable interim milestones in the December 2, 1992, commitment prior to U.S. EPA's final action on this proposal, U.S. EPA proposes in the alternative to conditionally approve the commitment as complying with section 110(k)(4). If the State adopts and submits the required legislation and rules to U.S. EPA within the applicable time frame, the conditionally approved commitment will remain part of the SIP until U.S. EPA takes final action approving or disapproving the new submittal. If U.S. EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

When U.S. EPA issues a final disapproval, the sanctions process under section 179(a) begins. Under section 179(a), U.S. EPA would be required to impose one of the sanctions

under section 179(b) after 18 months of the final disapproval. In addition, the final disapproval triggers the Federal implementation plan requirement under section 110(c). However, as stated above, U.S. EPA in an August 17, 1993, letter to Governor Bayh of Indiana has indicated its decision to exercise its discretionary authority under section 110(m) of the Act in this situation. Such discretionary authority allows U.S. EPA to impose sanctions at any time once a finding of SIP deficiency is made.

Public comment is solicited on the requested SIP submittal and on U.S. EPA's proposed actions. Comments received by the date listed above will be considered in the development of the final rule.

V. Regulatory Process

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

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

Conditional approvals under sections 110 and 301 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing or has committed to impose in the future. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S.

246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

If U.S. EPA issues a final disapproval, based upon the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state enforceability. Moreover, U.S. EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, U.S. EPA certifies that in the event U.S. EPA disapproves the State submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor would it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Nitrogen oxide, Particular matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 30, 1993.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 93-21981 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 123

[FRL-4727-6]

Water Pollution Control; Application by South Dakota to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This document contains corrections to the South Dakota NPDES program application published Wednesday, September 1, 1993 (58 FR 46145). The public hearing date previously published in the Federal Register was September 27, 1993; the hearing date is corrected to read October 14, 1993. On page 46145, in the second column under **DATES**, in the fourth line the date September 27, 1993 is corrected to read October 14, 1993. The date previously published in the Federal Register as the date by which public comments must be received was October 8, 1993. On page 46145, in the second column under **DATES**, in the second line the date is corrected to read October 22, 1993. On page 46147, in the first column under the heading "Public Hearing Procedures", in the second paragraph, in the sixth line the date

October 8, 1993 is corrected to read October 22, 1993. On page 46147 under the heading "Public Hearing Procedures", in the second column, in the first full paragraph, in the third and fourth lines the date October 8, 1993 is corrected to read October 22, 1993.

For the convenience of the reader, it is noted that the times and location of the public hearing (3 p.m. to 5 p.m. (CDT) and 7 p.m. to 9 p.m. (CDT) at the Matthew Training Center, Joe Foss Building; 523 East Capitol; Pierre, South Dakota 57501) remain the same.

FOR FURTHER INFORMATION CONTACT: Janet LaCombe at (303) 293-1593.

Dated: September 2, 1993.

Kerrigan G. Clough,
Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 93-21979 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

45 CFR Parts 301 and 305

RIN 0970-AA74

Child Support Enforcement Program; Revision of Child Support Enforcement Program and Audit Regulations

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: OCSE is proposing to amend the Child Support Enforcement program regulations governing the audit of State Child Support Enforcement (IV-D) programs and the imposition of financial penalties for failure to substantially comply with the requirements of title IV-D of the Social Security Act (the Act). This regulation would specify how audits will evaluate State compliance with the requirements set forth in title IV-D of the Act and Federal regulations, including requirements resulting from the Family Support Act of 1988 (Pub. L. 100-485). This proposal also redefines substantial compliance to place greater focus on performance and streamlines part 305 by removing unnecessary sections. This proposed regulation would be effective for audits conducted for periods beginning subsequent to publication of the final rule.

DATES: Consideration will be given to written comments and suggestions received by November 8, 1993.

ADDRESSES: Address comments to: Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, Mail Stop OCSE/PPD, 4th floor, 370 L'Enfant Promenade SW., Washington, DC 20447. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. in the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Lourdes Henry on (202) 401-5440 or FTS 8-441-5440.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approvals are necessary under this Paperwork Reduction Act.

Background

As a result of the enactment of the Child Support Enforcement Amendments of 1984, (Pub. L. 98-378), OCSE published final audit regulations on October 1, 1985, which affected the audits of State IV-D programs beginning in FY 1984. Section 9 of Public Law 98-378 and the implementing regulations require that OCSE conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; specify that OCSE use a substantial compliance standard to determine whether each State has an effective IV-D program; provide that any State found not to have an effective IV-D program in substantial compliance with the requirements of title IV-D of the Act be given an opportunity to submit a corrective action plan and, upon approval by OCSE, to take the corrective action necessary to achieve substantial compliance with those requirements; provide for the use of graduated penalty of not less than 1 nor more than 5 percent of a State's Aid to Families with Dependent Children (AFDC) program funds if a State is not in substantial compliance; and specify the period of time during which a penalty is effective.

In order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must meet the State plan requirements contained in 49 CFR part 302. Under current regulations, there are separate audit criteria in part 305 for each of the State plan requirements in part 302. Currently, 29 criteria are listed in § 305.20 (which include numerous related subcriteria) which encompass the requirements of part 302 which are procedural in nature. These procedural criteria must be met for a finding of

substantial compliance. In addition, the regulations list 23 criteria (which include numerous related subcriteria) which encompass the requirements in part 302 which are related to the provision of services. These criteria must be met in 75 percent of the cases reviewed for a finding of substantial compliance. Finally, to be found in substantial compliance, a State must pass performance indicators specified in § 305.98 with an aggregate score of at least 70.

On January 31, 1989, OCSE published a Notice of Proposed Rulemaking (54 FR 4841) (hereinafter referred to as the January 31 proposed rule) which would have consolidated the current audit criteria by grouping them by major program function. Thus, instead of auditing each criterion separately, we proposed that two or more criteria would be grouped under one performance standard for evaluation. In addition, because we stated in the audit regulations published October 1, 1985 (50 FR 40120), that additional performance indicator components measuring paternity establishment and cost avoidance would be added to the performance measurement portion of the audit, those indicator components were included in the January 31 proposed regulation. In conjunction with the additional indicator components, we proposed a revised scoring system for State performance on the performance indicator components.

We only finalized those aspects of the January 31 proposed rule which establish the time periods covered by audits or follow-up reviews. That final rule, published March 8, 1990 (55 FR 8465), responded to comments received on the particular portions of the proposed regulation which were finalized. It indicated that we would review the rest of the comments when a new proposed regulation was developed.

The March 8 final rule specifies that:

- (1) The audit covers a period comprised of any 12 consecutive months;
- (2) Follow-up reviews cover the first three-month period beginning after the corrective action period; and
- (3) For States operating under corrective action with respect to performance indicators, follow-up reviews cover the first full four quarters following the corrective action period.

On August 4, 1989, another final rule, Standards for Program Operations, was published (54 FR 32284) which implements the requirements of sections 121 and 122 of Public Law 100-485. Specifically, the final rule revised 45 CFR parts 302 and 303 to specify

standards for processing child support enforcement cases and timeframes for distributing child support collections under title IV-D of the Act. States were required to meet these standards by October 1, 1990.

With regard to other Family Support Act requirements, on May 15, 1991, a final rule was published which implemented the requirements of Public Law 100-485 governing \$50 pass-through payments, mandatory support guidelines, mandatory genetic testing, paternity establishment and laboratory testing (56 FR 22335). The requirements of Public Law 100-485 governing immediate wage withholding, review and adjustment of support obligations and monthly notice of support collections were published on July 10, 1992 (57 FR 30658). Additional review and adjustment requirements were published December 30, 1992 (57 FR 61559).

As a result of the passage of time, the child support provisions of Public Law 100-485, and the necessary changes to program regulations, we have re-examined the audit process and regulations and have developed the current proposal. In developing this proposal, we considered the impact of the new requirements on States and our experience with the audit process to date. We also reviewed the comments on the January 31 proposal.

In addition, we considered the concerns that many States and other groups have expressed about the current audit process. First, there is a concern that the scope, complexity, and length of the audit is expanding. OCSE audits cover numerous criteria and sub-criteria. The child support provisions of the Family Support Act of 1988 add to the complexity of the support enforcement program, and hence the audit process, by significantly expanding the number of criteria to be reviewed. Partly as a result of this growing scope and complexity, it takes an increasingly greater amount of time and effort to conduct audits. This may cause delays in obtaining results and in performing audits in other States. In addition, although service delivery is already the primary focus of the audit (i.e., the 75 percent case action standard), there is a concern that the audit should focus more on outcomes and results. Focusing more on outcomes and results, including the timeliness of providing services, would allow the audit to better measure State program performance.

In response to concerns about the expanding scope of the audit, we are proposing to redefine substantial compliance to focus on certain criteria:

(1) Service-related criteria that a significant number of States have failed to comply with in the past; and, (2) new or newly revised criteria. By eliminating certain administrative or procedural criteria and focusing on service-related criteria to the extent possible, we believe we can move toward a more results-oriented audit. The audit process is not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State Plan approval process, the audit resolution and tracking system, as well as the established audit process, to review State compliance.

This proposed rule also: Specifies how audits would evaluate State compliance with the new standards for program operations as well as other new requirements mandated by Public Law 100-485 by setting forth new and revised audit criteria and processes; combines related requirements into groupings; and streamlines part 305 by removing unnecessary sections. The requirements in this proposed rule would be effective for audits conducted for periods beginning subsequent to publication of the final rule.

In response to the standards and timeframes set forth in the final rule, Standards for Program Operations, a number of commenters asked that States not be subject to a determination of substantial compliance with the program standards as a result of an audit until there has been a period of evaluation of State performance with respect to the standards. In addition, the preponderance of commenters indicated that they could not meet the timeframes without Statewide and comprehensive automated information management systems and asked that the requirements not be effective until October 1, 1995, when States are required by the Family Support Act of 1988 to have operational automated support enforcement systems in place. A number of commenters requested that we change the current audit standard of 75 percent compliance with program requirements to begin with a lower percentage of compliance for the new requirements which became effective October 1, 1990, and increase the percentage of cases which must be processed for substantial compliance determinations between fiscal years 1991 and 1995.

As stated in the preamble to the standards for program operations final rule, Congress intended, by requiring the Secretary to publish final regulations within 10 months of the effective date of Public Law 100-485, that the effective date of the regulation should not be inordinately delayed. We

believe that most States should have been able to meet the new standards and timeframes by October 1, 1990, and will evaluate State implementation of these standards. However, States will not be subject to findings of substantial noncompliance and penalties for failure to meet these requirements and timeframes until after final audit regulations are published. Since States will not be penalized for substantial noncompliance with the program standards requirements until after final audit regulations are published, adequate time will have passed to allow all States to meet program standards. Nevertheless, given the deficiencies in the delivery of support enforcement services that necessitated the setting of program standards in the first instance, States should already be focusing their efforts to meet these standards. In developing the Standards for Program Operations, OCSE consulted with a work group composed of representatives of organizations representing Governors, State welfare administrators and State child support enforcement directors prior to issuing the proposed regulation. We received comments from more than 150 commenters representing States, localities, advocacy groups and private individuals. These comments were taken into consideration in drafting the final regulation. In response to the comments suggesting that we lower the percentage rate of compliance, we believe that the 75 percent standard has proven to be a reasonable standard. We also believe it is essential to maintain the standard to ensure that States work all cases and provide all necessary services in accordance with the new program standards.

Statutory Authority

These proposed regulations are published under the authority of sections 1102, 402(a)(27), 452(a)(4), 452(g), and 403(h) of the Act. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Section 402(a)(27) requires each State to operate a child support program in substantial compliance with the title IV-D State plan. Section 452(a)(4) requires the audit of each State IV-D program to assure compliance with title IV-D requirements at least once every three years (or not less often than annually in the case of any State which is being penalized, or is operating under a corrective action plan). Section 452(g) of the Act, added by section 111(a) of Public Law 100-485, sets forth the requirements governing paternity

establishment percentages which States must meet to be found to comply substantially with the requirements of title IV-D. Finally, section 403(h) provides for the imposition of an audit penalty of not less than one nor more than five percent of a State's AFDC funding for any State which fails to substantially comply with title IV-D requirements within the period of time the Secretary determines to be appropriate for corrective action.

Regulatory Provisions

OCSE proposes to amend part 305 in several ways: By revising the evaluation criteria to reflect new requirements in 45 CFR parts 302 and 303, including those governing standards for program operations, mandatory guidelines, immediate wage withholding, review and adjustment of support orders, and other provisions of Public Law 100-485; by eliminating duplicative regulations from part 305; and by redefining criteria that States must meet to be determined to be in substantial compliance.

General Definitions—§ 301.1

For consistency with the changes to part 305, this proposed rule would move the definition of "procedures" in § 305.1(b) and place it in alphabetical order in § 301.1.

Scope of Part 305—§ 305.0

Current regulations at § 305.0 describe 45 CFR part 305 section by section: Sections 305.10 through 305.13 describe the audit; § 305.20 defines an effective program for purposes of an audit; §§ 305.21 through 305.57 and § 305.98 set forth the audit criteria used to determine program effectiveness including performance indicators; § 305.99 governs the notice and corrective action period; and § 305.100 governs the imposition of a penalty.

We believe §§ 305.21 through § 305.57 are unnecessary and serve no substantive purpose because these regulations merely cross-reference and/or restate the requirements in the corresponding State plan regulations in part 302 and related program requirements in part 303. Accordingly, we propose to delete §§ 305.21 through 305.57 and, revise § 305.20 which lists administrative criteria States must meet and service related criteria for which States must have and use procedures required in a specified percentage of the cases reviewed for each criterion. In addition, § 305.20 would cross reference relevant State plan and program regulations contained in parts 302 and 303 and make other changes described below.

Accordingly, § 305.0 would be revised to state: Sections 305.10 through 305.13 describe the audit; § 305.20 sets forth audit criteria and subcriteria the Office will use to determine program effectiveness and defines an effective program for purposes of an audit; § 305.97 sets forth the paternity establishment percentage requirements; § 305.98 sets forth the performance indicators OCSE will use to determine State IV-D program effectiveness; § 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV-D program; and § 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and has failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

Definitions—§ 305.1

As discussed above, the definition of "procedures" in § 305.1(b) would be moved to § 305.1. Section § 305.1 would continue to provide that the definitions found in § 301.1 apply to part 305.

Timing and Scope of the Audit—§ 305.10

For consistency with the changes proposed elsewhere in part 305, § 305.10(a) would be revised to state that the audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20, 305.97 and 305.98. As a technical change, the name "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" in paragraph (c)(2) would be changed to "Government Auditing Standards."

State Comments—§ 305.12

Current regulations at § 305.12(a) provide for informing the IV-D agency during the audit entrance conference of those political subdivisions of the State that will be audited and making preliminary arrangements for personnel and information to be made available. We propose to replace this provision with more general language indicating that any necessary arrangements for conducting the audit will be made at the audit entrance conference. States will be informed, either in the letter States receive from OCSE in the quarter preceding commencement of the audit or at the entrance conference, of all information necessary to prepare for the audit. No change in current practice, or information provided to the States, is intended or anticipated as a result of this proposed change.

**Effective Support Enforcement—
§ 305.20**

Current § 305.20 sets forth the criteria which are used to measure State compliance with the requirements of title IV-D of the Act. Section 305.20(a) lists selected criteria and related subcriteria which must be met or under which the procedures involved must be used in at least 75 percent of the cases reviewed for audits conducted for fiscal year 1984. Additional criteria and related subcriteria as well as performance indicators incorporated into the audit of State child support programs for audit periods subsequent to FY 1984 because of changes in title IV-D of the Act and implementing program regulations are listed in §§ 305.20 (b), (c) and (d). In total, the regulations list 29 criteria which must be met and 23 criteria where the required procedures must be used in 75 percent of the cases reviewed.

1. Revised Definition of Substantial Compliance.

We are proposing to completely revise § 305.20 by redefining the criteria that States must meet to be determined to be in substantial compliance. As part of this revision, § 305.20 would be changed to address new regulatory requirements including non-AFDC Medicaid and former AFDC cases, program standards and timeframes requirements, and other new program requirements under Public Law 100-485 (i.e., mandatory guidelines, review and adjustment of support orders, monthly notice of support collections, mandatory genetic testing, and immediate wage withholding).

While program regulations specify how States must operate IV-D programs to be in compliance with State plan requirements and what program expenditures may qualify for Federal funding, audit regulations specify those requirements which must be met in order for a State to be determined to be in substantial compliance with the requirements of title IV-D of the Act and to avoid fiscal penalties. Our goal in revising the audit regulations is to redefine substantial compliance to focus on certain criteria: (1) Service-related criteria that a significant number of States have failed to comply with in the past; and, (2) new or newly revised criteria. Focusing on these criteria would eliminate many of the administrative or procedural criteria that are currently part of substantial compliance determinations and which are currently being met, thereby making the audit more results oriented. As previously stated, the audit process is

not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State Plan approval process, that audit resolution and tracking system, as well as the established penalty process, to review State compliance.

a. Ten percent materiality test. First, we propose including in the determination of substantial compliance criteria that, based on past audits, many States have failed. Specifically, we looked at the results of FY 1984 through FY 1987 audits, and calculated the number of States that had failed each existing criterion compared to the number of audit reports issued since that criterion became effective. We propose including in the determination of substantial compliance those criteria which, in general, more than 10 percent of the States had failed during that period.

The 10 percent cutoff point is consistent with the auditing concept of "materiality." According to auditing theory, the audit should be able to detect errors and conditions that materially affect the ability of the child support program achieve desired results and benefits. Ten percent is commonly used as a benchmark for materiality. In this case, we believe that if less than 10 percent of States are failing a given criterion, we can omit that criterion from the determination of substantial compliance without materially affecting the audit's conclusions about the child support program in the State. However, if a specific criterion meets the other test for inclusion in substantial compliance (e.g., it is new or revised), it would not be deleted.

More than 10 percent of States failed the following criteria: Reports and maintenance of records; separation of cash handling and accounting functions; establishing paternity; distribution; individuals not otherwise eligible; State parent locator service; support obligations; notice of collection of assigned support; Federal tax refund offset; withholding of unemployment compensation; wage or income withholding; imposition of liens against real and personal property; posting security, bond or guarantee to secure payment of overdue support; and medical support enforcement.

b. New and newly revised criteria. After applying the 10 percent materiality test to existing audit criteria, we turned to new requirements (for the most part, based on the Family Support Act of 1988) that have not been audited in the past and therefore cannot be judged by the 10 percent materiality rule. We propose to consider all of these

requirements in the determination of whether a State's IV-D program is in substantial compliance. Also, there have been regulatory revisions to several pre-existing requirements (e.g., interstate, non-AFDC, and medical support requirements), and we propose to retain these revised criteria in the determination of substantial compliance. Based on past experience with State implementation of new or significantly changed program requirements, we believe that States' activities related to requirements stemming from the Family Support Act and revised, pre-existing requirements must be audited to ensure State compliance. These criteria are: Collection and distribution of support payments by the IV-D agency, § 302.32; distribution of support collections, § 302.51; notice of collection of assigned support, § 302.54; guidelines for setting child support awards, § 302.56; establishment of cases and maintenance of case records, § 303.2; location of absent parents, § 303.3; establishment of support obligations, § 303.4; establishment of paternity, § 303.5; enforcement of support obligations, § 303.6; State income tax refund offset, § 303.6; provision of services in interstate IV-D cases, § 303.7; review and adjustment of support obligations, § 303.8 (as amended at 57 FR 61559 on December 28, 1992); case closure, § 303.11; securing medical support information, § 303.30; securing and enforcing medical support obligations, § 303.31; procedures for wage or income withholding, § 303.100, and expedited process under § 303.101.

We would like to emphasize that States are required to meet all Federal requirements contained in program regulations, whether or not the requirements are included under § 305.20. Auditors may still examine requirements that are not contained in § 305.20, but would issue management recommendations, instead of findings of substantial noncompliance, for failure to meet program requirements not included under § 305.20.

Implementation of management recommendations should help States to improve their performance. In addition, compliance with all program requirements will continue to be monitored by OCSE Regional Offices through program and financial reviews and the State plan approval process.

In addition to narrowing the number of criteria contained in the determination of substantial compliance, we also propose streamlining the audit regulations by grouping related requirements under certain criteria (e.g., collection and

distribution of support payments, enforcement, etc). Grouping is merely a way to evaluate related requirements and will allow audit results to be reported in a more timely manner. States must still meet the requirements of each specific regulation cited.

2. Criteria States Must Meet To Be Determined To Be in Substantial Compliance

The proposed paragraph § 305.20(a) would require that, for audit periods beginning after publication of this regulation as a final rule, a State must meet the IV-D State plan requirements contained in part 302 of this chapter measured as set forth in paragraph (a).

a. Administrative criteria. Under § 305.20(a)(1), the State must meet the requirements under the following criteria:

- (1) Statewide Operations, § 302.10;
- (2) Reports and Maintenance of Records, § 302.15(a);
- (3) Separation of cash handling and accounting functions, § 302.20; and
- (4) Notice of Collection of Assigned Support, § 302.54.

b. Service-related criteria. i. 90 percent standard for case opening and closure. In response to the Notice of Proposed Rulemaking on Standards for Program Operations, commenters applauded the addition of new timeframes and requirements in the areas of case opening, the application process and case closure. Many commenters pointed out that because these areas are crucial to the success of the child support enforcement process, allowing States to fail to take appropriate action in up to 25 percent of the cases (through application of the 75 percent audit standard) reviewed was excessive. Alternative percentages of compliance suggested ranged from 90 to 98 percent of the cases reviewed.

We agree that unless applications are provided and accepted in timely manner and cases are opened and maintained appropriately, IV-D services cannot be provided. Furthermore, with regard to the new case closure criteria, it is essential that only those cases in which there is no reasonable expectation of establishing paternity, obtaining a support order, or collecting child support, either now or in the future, are closed. Therefore, we propose to require that, in order to be determined to be in substantial compliance, States must have and use the procedures for establishment of cases and maintenance of case records and case closure at §§ 303.2 and 303.11, which were effective October 1, 1990, in at least 90 percent of the cases reviewed for each criterion. We specifically

request comments regarding this proposal.

To reflect the changes discussed above, proposed § 305.20(a)(2) would provide that, for audits conducted for any period beginning after publication of this regulation as a final rule, to be determined to be in substantial compliance, the State must have and use procedures required under the following criteria in at least 90 percent of the cases reviewed for each criterion:

- (1) Establishment of Cases and Maintenance of Case Records, § 303.2; and
- (2) Case Closure, § 303.11.

Under the case closure criteria, auditors would evaluate cases closed during the audit period to determine compliance with the requirements of § 303.11. States are not required to close cases, however, and should an unworkable case be left open, it would not count against the State during an audit.

ii. 75 percent standard for providing services. Proposed § 305.20(a)(3) would provide that, for audit periods beginning after publication of this regulation as a final rule, to be determined to be in substantial compliance, the State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion:

- (1) Collection and Distribution of Support Payments, including: Collection and distribution of support payments by the IV-D agency under § 302.32 (b) and (f); distribution of support collections under § 302.51; and distribution of support collected in title IV-E foster care maintenance cases under § 302.52;
- (2) Services to Individuals not Receiving AFDC or Title IV-E Foster Care Assistance, § 302.33(a);
- (3) Establishment of Support Orders, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4 (d) and (e);
- (4) Establishment of Paternity, including: Location of absent parents under § 303.3; and establishment of paternity under § 303.5(a);
- (5) Enforcement of Support Obligations, including, in all appropriate cases: Location of absent parents under § 303.3; enforcement of support obligations under § 303.6, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the

absent parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(6) Provision of Services in Interstate IV-D Cases, including § 303.7 (a), (b), and (c);

(7) Review and Adjustment of Support Obligations, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8 (as amended at 57 FR 61559 on December 28, 1992); and

(8) Medical Support, including: Location of absent parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

Under this proposal, location is not listed as a separate criterion but is included under the paternity establishment, support order establishment, review and adjustment, medical support, and enforcement criteria because the location function is not an end in itself and is often the initial step in providing these program services. We do not believe that this places less emphasis on the location function. On the contrary, it will emphasize the need to exhaust location sources in order to proceed with the necessary services in the case. Moreover, it is illustrative of the transition to a more results-oriented audit.

Thus, if a case requires support obligation services and the absent parent's whereabouts are unknown, the State must meet the applicable location requirements at § 303.3 and the requirements for support obligation establishment at §§ 303.4(d) and (e) and 302.56 in any case reviewed for purposes of the audit. If the State does not meet the location requirements in a case requiring support obligation establishment, it would be counted against the State in computing the efficiency rate for support obligation establishment and the audit findings would note that the State failed to substantially comply with the support obligation establishment requirements due, at least in part, to a failure to meet the location requirements. We would like specific comments regarding the potential effect of evaluating locate as a component of other services rather than as specific service.

If a support obligation cannot be established because the alleged father is not located, even though the State met all other location requirements (i.e., checked all sources and repeated location attempts) this would not be counted against the State. There is, currently, a perceived misunderstanding that States must obtain a successful outcome in a case in order to receive credit for having worked that case. We would like to clarify that if a State meets all Federal requirements, including timeframes, with respect to a particular case but cannot locate the absent or putative father, for example, the State would not be penalized for failure to provide the necessary service. Instead, we would credit the State with taking appropriate action.

We would also like to clarify that States must meet the medical support requirements in §§ 303.30 and 303.301, and are subject to an audit under part 305 of State performance with respect to those requirements, irrespective of any optional cooperative agreement with a State Medicaid agency under 45 CFR part 306.

Under current audit procedures, enforcement is evaluated in three ways: (1) An overall enforcement criterion under which a State must identify and contact a delinquent obligor and take any enforcement action; (2) a combined enforcement criterion under which a State, in accordance with State guidelines/criteria, must implement liens against real and personal property, withholding of unemployment compensation, State tax refund offset, and posting security, bond, or other guarantee to secure payment of overdue support; and, (3) individual criteria under which enforcement techniques (e.g., wage withholding, Federal Tax offset) are evaluated separately. According to the second way of evaluating enforcement, a State must use all appropriate enforcement techniques, in accordance with guidelines and procedures developed under § 302.70 or criteria established in § 302.65(c)(3), in order to get credit, for purposes of substantial compliance, in a case. The third way of evaluating enforcement considers whether a State is taking all appropriate actions in accordance with Federal regulations and State statutes and procedures. Thus, these different ways of evaluating enforcement may require concurrent application of several enforcement techniques.

We are proposing that, in order to get credit for enforcement in a case, a State must implement wage withholding and Federal and State income tax refund offset, if appropriate; and, if wage

withholding is not available or appropriate, attempt to use at least one other enforcement technique. Under this proposal, use of some enforcement techniques would be mandatory in all appropriate cases in accordance with Federal requirements, i.e., wage withholding and submitting once a year all cases, in accordance with § 303.6(c)(3), to State and Federal income tax refund offset. States must take these actions in all appropriate cases, in accordance with § 303.6. Section 303.6(c)(3) requires annual submittal to tax offset of all cases which meet the certification requirements under § 303.12 and State guidelines developed under § 302.70(b) for State income tax refund offset, and which meet the certification requirements under § 303.72 for Federal income tax refund offset.

Cases exist in which wage withholding is not available or appropriate because, for example: The absent parent is self employed, unemployed, or does not have a source of income subject to withholding; or the employer/absent parent cannot be located. In these cases some other enforcement technique, in addition to Federal and State tax refund offset, must be used. States have discretion with respect to the use of other enforcement techniques (beside wage withholding and Federal and State tax refund offset) as long as there is compliance with Federal regulations, State procedures, and guidelines developed by the State under § 302.70(b) which outline when it is inappropriate to use an enforcement technique.

Under this proposal, in cases where wage withholding cannot be implemented or is unavailable, States will be given credit, for audit purposes, for taking or attempting an enforcement action if they do any one of the following in accordance with § 303.6: Impose a lien against real and personal property under § 303.103; require the obligor to post security, bond, or other guarantee to secure payment of overdue support under § 303.104; make information available to consumer credit reporting agencies under § 303.105; withhold unemployment compensation under § 302.65; or request full collection services by the Secretary of the Treasury under § 303.71. A State will also receive credit for enforcement if it takes an enforcement action that is not specifically listed above, if the action is consistent with State laws and procedures.

This proposal would emphasize the use of wage withholding and tax refund offset, which are often the most effective enforcement techniques while ensuring

that more difficult cases, those where wage withholding and/or tax offset cannot be utilized, are not ignored. Furthermore, it should ensure that at least one enforcement action is taken in each case during the audit period, without penalizing States for failing to implement several enforcement techniques concurrently.

iii. Credit for providing services. Proposed paragraph (a)(4) would indicate that, with respect to meeting the 75 percent standard under § 305.20(a)(3), for any audit period beginning after the date the final regulation is published:

(1) Notwithstanding timeframes for location and paternity establishment contained in §§ 303.3(b)(3) and 303.5, if paternity establishment is needed in a particular case and paternity is established during the audit period, the State will be considered to have taken appropriate action to establish paternity in that case for audit purposes.

(2) Notwithstanding timeframes for location and support order establishment contained in §§ 303.3(b)(3) and 303.4, if a support order needs to be established and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action to establish an order in that case for audit purposes.

(3) Notwithstanding timeframes for location and review and adjustment of support orders contained in §§ 303.3(b)(3) and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures in § 303.8, and the order is adjusted during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action for review and adjustment of orders in that case for audit purposes.

(4) Notwithstanding timeframes for location and wage withholding in §§ 303.3(b)(3) and 303.100, if wage withholding is appropriate and implemented in a particular case, and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(5) Notwithstanding timeframes for location and enforcement of support obligations in §§ 303.3(b)(3) and 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law in addition to Federal and State tax refund offset, which results in a collection received

during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

When a State is considered to have taken an appropriate action in a case for audit purposes, as stated above, the case would count towards meeting the 75 percent standard in proposed § 305.20(a)(3) for paternity establishment, support order establishment, support order adjustment, and enforcement of support obligations, as appropriate. Under proposed paragraph (a)(4) a State would receive credit in such an instance for taking an action in a case even if relevant timeframes are missed. These timeframes include the timeframe for location in § 303.3(b)(3) since, as mentioned earlier, we are proposing that location be evaluated as a part of other criteria.

These credits are another indication of the transition to a more results-oriented audit. We believe that, for audit purposes, a State should not be penalized when timeframes are missed in a case if a successful result is achieved (paternity or a support order is established, an order is adjusted, wages are withheld, or a collection is made), since these results are the main goals of the child support enforcement program. We further believe that this position is responsive to the concerns of States that missing an interim timeframe, when a successful result is achieved in a case, may create a disincentive to work the case.

However, under this proposal, if timeframes are not met in a case, States would only get credit for taking an appropriate action if the action is successfully completed, not simply attempted, within the audit period. For example, if timeframes are missed in a case, a State can get credit for: paternity establishment only if paternity is established; support order establishment only if an order is established; wage withholding only if withholding is implemented and wages are withheld as a result; and support order adjustment only if an order is adjusted.

We would like to emphasize that a State has to successfully complete an action in order to get credit in a case only if timeframes are not met in the case. If, in a case, a State complies with the requirements, including timeframes, in proposed § 305.20(a)(3), the State will get credit for taking an action in that case even if the action is not successful.

Enforcement is a major goal of the program. As a result, when enforcement timeframes are missed, we propose giving credits for wage withholding, or when wage withholding is not appropriate in a given case, the use of

some other appropriate enforcement technique available under State law, in addition to the Federal and State tax refund offset, which results in a collection received during the audit period. Wage withholding is subject to specific timeframes in § 303.100. State and Federal income tax refund offset, although also highly efficient and effective procedures, are not subject to similar case processing timeframes. Other enforcement techniques are subject to the general timeframe in § 303.6.

Since some enforcement techniques, such as liens and consumer credit reporting, do not immediately result in collections and it is difficult to determine when these actions have been successful in enforcing an order, we propose only to give credit when a collection is received as a result of use of the technique. In successful wage withholding cases, collections occur almost immediately, so it is easy to determine when it has been successfully completed.

With respect to paternity establishment, we are considering an option that would allow States that meet the paternity establishment percentage standard in the proposed § 305.97 to be exempt from the proposed paternity establishment audit criteria at § 305.20(a)(3)(iv) and (4)(i). We believe this option is consistent with a more results-oriented audit approach. However, the paternity establishment percentage standard and related data need to be tested and validated before we could implement this approach. In addition, we are concerned that timeliness is not addressed by the paternity establishment percentage standard. We would like specific comments on this approach including suggestions for incorporating a timeliness measure in the paternity establishment percentage standard.

We emphasize that all timeframes, including those for paternity establishment, support order establishment, review and adjustment, and wage withholding, are still Federal requirements that States must meet. However, as described above, States may receive credit for taking an action under proposed § 305.20(a)(4) when the outcome is successful even if timeframes are missed in a case.

c. Expedited processes. Proposed paragraph (a)(5) would require that, for audit periods beginning after the date the final regulation is published, the State must meet the requirements for Expedited Processes under § 303.101(b) and (e) to be in substantial compliance. The compliance percentages contained in the expedited processes regulation

necessitate separating it from the service-related category which is evaluated using a 75 percent standard.

d. Performance indicators. Proposed paragraph (a)(6) would continue to require that the State must meet the criteria referred to in § 305.98(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section.

e. Paternity establishment standard. Proposed paragraph (b) would require that, for any fiscal year beginning on or after October 1, 1991, the State must meet the requirements for the paternity establishment percentage standards under § 305.97 of this part.

Paternity Establishment Percentage Standard—§ 305.97

Section III of the Family Support Act of 1988 amended section 452 of the Act by adding a new paternity establishment standard, section 452(g), that States must meet for any fiscal year beginning on or after October 1, 1991.

To implement this requirement, we propose to add a new § 305.97 titled, "Paternity Establishment Percentage Standard" which would set forth the requirements States must meet in order to be determined to be in substantial compliance with title IV-D of the Act.

Proposed § 305.97(a) would define, for purposes of this section, the terms: "Paternity establishment percentage", which means the number of children receiving services under title IV-A or IV-D of the Act who were born out of wedlock and for whom paternity has been established, divided by the total number of children receiving AFDC or IV-D services who were born out of wedlock; "Total number of children" to specify that it does not include any child who is a dependent child by reason of the death of a parent or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate under § 232.41 of this chapter; and "The applicable number of percentage points," which means three percentage points multiplied by the number of fiscal years between fiscal year 1989 and the fiscal year being evaluated.

As explained in program instructions OCSE-AT-88-20 (December 28, 1988), later amended by OCSE-AT-89-3 (March 6, 1989), each State was required to report the data necessary to calculate baseline data for the paternity establishment percentage as of December 31, 1988. This data will be used to measure State compliance with the requirements in § 305.97(b). Thus, for all children in IV-D cases that were open on December 31, 1988, regardless of whether such cases received any IV-

D services during 1988, or previously, the following information is required:

- (1) The total number of children who were born out of wedlock; and
- (2) The number of children who were born out of wedlock and for whom paternity has been established.

As noted in AT-90-12, it is permissible to count a child for whom paternity must be established even though the child was not born out of wedlock.

Failure of a State to report acceptable baseline data could result in a finding of non-compliance since appropriate information will not be available to determine whether the State met the statutory standard. As set forth in section 111 of Public Law 100-485, the Secretary will include in the existing annual report to the Congress this data and future data upon which the paternity establishment percentages for States for a given fiscal year are based.

Section 111 also specifies that the Secretary may modify the requirements to take into account such additional variables as the Secretary identifies that affect the ability of a State to meet the requirements. We did not do so in this proposal because we have insufficient experience and data to identify any variables. Should such variables be identified in the future, we would consider modifications to the requirements.

Proposed § 305.97(b) would set forth the paternity establishment percentage standard that States must meet for any fiscal year beginning on or after October 1, 1991. A State would be found not to have complied substantially unless its paternity establishment percentage for such fiscal year equals or exceeds, on the last day of the fiscal year:

- (1) 50 percent;
- (2) The paternity establishment percentage of the State for fiscal year 1988 (the baseline data calculated as of December 31, 1988), increased by the applicable number of percentage points; or
- (3) The paternity establishment percentage determined with respect to all States for such fiscal year.

In order to determine the reliability of the data used to compute the performance indicators under § 305.98, OCSE auditors evaluate the States' expenditure and collection reporting systems, as well as the reporting systems for paternity data used to compute the paternity establishment standard. If the auditors determine that the system(s) is unreliable, it may result in a penalty under the administrative criterion Reports and Maintenance of Records, § 302.15(a).

Performance Indicators—§ 305.98

The performance indicators were developed in 1983 as a way to help evaluate State IV-D program performance. The indicators in current regulations evaluate the cost effectiveness of State IV-D programs and the reimbursement rate of assistance payments made to those receiving AFDC for reasons other than unemployment in two-parent families. Currently, an accounts receivable indicator is specified but not included in the scoring system. The performance indicators do not address IV-D functions such as paternity establishment and do not take into account the welfare cost avoidance value of the child support enforcement program.

We now believe it is necessary to delay any revisions to performance indicators until such time as more refined indicators can be devised and States have been given time to implement the requirements of Public Law 100-485, specifically, the new standards for program operations. Furthermore, given the fact that the standards for program operations will enable us to more effectively evaluate State IV-D program performance, we are committed to studying the entire subject of performance indicators to determine which output measures will be the most meaningful reflection of IV-D program performance.

The only change we propose to make to § 305.98 at this time is to revise § 305.98(d) to state that the performance indicator scoring system will be described and updated periodically by the Office (i.e., OCSE). We are deleting the current requirement which states that we will describe and update the scoring system every two years to allow for the flexibility and time necessary to thoroughly review the current system. We will publish any changes to the scoring system in the *Federal Register* for public comment in advance of their effective date.

Notice and Corrective Action Period—§ 305.99

Current paragraph (b)(2) provides that the notice of substantial noncompliance identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed). Proposed paragraph (b)(2) would provide that the notice of substantial noncompliance identify any audit criteria listed in § 305.20(a)(3) of this part that the State met only marginally [that is, in 75 to 80 percent of cases reviewed for criteria in (a)(3)]. This

change replaces the reference to § 305.20 (a)(2), (b)(2) or (c)(2) with § 305.20(a)(3). Also the definition of marginally-met is changed for consistency with the proposed changes to § 305.20.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments which are not considered small entities under the Act.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This proposed rule will have little or no net economic effect, because it will not change the requirements of State Child Support Enforcement programs or the penalties which may be levied against programs which fail to substantially comply with the requirements. The net effect here is not on actual State program practices but rather, on how these practices will be evaluated.

List of Subjects

45 CFR Part 301

Child Support, Grant programs/social programs.

45 CFR Part 305

Accounting, Child support, Grant programs/social programs and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93-023, Child Support Enforcement Program)

Dated: June 9, 1993.
Laurence J. Love,
Acting Assistant Secretary for Children and Families.
 Approved: July 23, 1993.
Donna E. Shalala,
Secretary.

For the reasons set out in the preamble, we propose to amend 45 CFR parts 301 and 305 as follows:

1. The authority citation for part 301 continues to read as set forth below:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by adding in alphabetical order the definition of "Procedures."

§301.1 General definitions.

* * * * *
Procedures means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.
 * * * * *

3. The authority citation for part 305 is revised to read as set forth below:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1), (4) and (g), and 1302.

4. Section 305.0 is revised to read as follows:

§305.0 Scope.

This part implements the requirements in section 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV-D and for a possible reduction in Federal reimbursement for a State's title IV-A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 sets forth audit criteria and subcriteria the Office will use to determine program effectiveness and defines an effective program for purposes of an audit. Section 305.97 sets forth paternity establishment percentage requirements. Section 305.98 sets forth the performance indicators the Office will use to determine State IV-D program effectiveness. Section 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV-D program. Section 305.100 provides for the imposition of a penalty

if a State is found by the Secretary not to have had an effective program and to have failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

5. Section 305.1 is revised to read as follows:

§305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part.

6. Section 305.10 is amended by revising the last sentence of paragraph (a) and paragraph (c)(2) to read as follows:

§305.10 Timing and scope of audit.

(a) * * * The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20, 305.97 and 305.98 of this part.
 * * * * *

(c) * * *
 (2) Use the audit standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."
 * * * * *

7. Section 305.12 is amended by revising paragraph (a) to read as follows:

§305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV-D agency.

At that conference the Office will explain how the audit will be performed and make any necessary arrangements.
 * * * * *

8. Section 305.20 is revised to read as follows:

§305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act:

(a) For any audit period which begins after (INSERT DATE FINAL RULE IS PUBLISHED), a State must meet the IV-D State plan requirements contained in Part 302 of this chapter measured as follows:

(1) The State must meet the requirements under the following criteria:

- (i) Statewide Operations, § 302.10;
- (ii) Reports and Maintenance of Records, § 302.15(a);
- (iii) Separation of cash handling and accounting functions, § 203.20; and
- (iv) Notice of Collection of Assigned Support, § 302.54.

(2) The State must have and use procedures required under the following

criteria in at least 90 percent of the cases reviewed for each criterion:

(i) Establishment of Cases and Maintenance of Case Records, § 303.2; and

(ii) Case Closure, § 303.11.

(3) The State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion:

(i) Collection and Distribution of Support Payments, including: Collection and distribution of support payments by the IV-D agency under 302.32(b) and (f); distribution of support collections under § 302.51; and distribution of support collection in title IV-E foster care maintenance cases under § 302.52;

(ii) Services to Individuals not Receiving AFDC or Title IV-E Foster Care Assistance, § 302.33(a);

(iii) Establishment of Support Orders, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4 (d) and (e);

(iv) Establishment of Paternity, including: Location of absent parents under § 303.3; and establishment of paternity under § 303.5(a);

(v) Enforcement of Support Obligations, including, in all appropriate cases: Location of absent parents under § 303.3; enforcement of support obligations under § 303.6,

including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the absent parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(vi) Provision of Services in Interstate IV-D Cases, including § 303.7 (a), (b), and (c);

(vii) Review and Adjustment of Support Obligations, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8; and

(viii) Medical Support, including: Location of absent parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

(4) With respect to the 75 percent standard in § 305.20(a)(3):

(i) Notwithstanding timeframes for location and paternity establishment contained in §§ 303.3(b)(3) and 303.5, if paternity establishment is needed in a particular case and paternity is established during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(ii) Notwithstanding timeframes for location and support order establishment contained in §§ 303.3(b)(3) and 303.4, if a support order needs to be established in a case and an order is established during that audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(iii) Notwithstanding timeframes for location and review and adjustment of support orders contained in §§ 303.3(b)(3) and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8, and the order is adjusted during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(iv) Notwithstanding timeframes for location and wage withholding in §§ 303.3(b)(3) and 303.100, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(v) Notwithstanding timeframes for location and enforcement of support obligations in §§ 303.3(b)(3) and 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law, in addition to Federal and State tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(5) The State must meet the requirements for Expedited Processes under § 303.101 (b) and (e).

(6) The State must meet the criteria referred to in § 305.98(c) of this part relating to the performance indicators prescribed in § 305.98(a).

(b) For any fiscal year beginning on or after October 1, 1991, the State must meet the requirements for the paternity establishment percentage standards under § 305.97 of this part.

§§ 305.21-305.57 [Removed and Reserved]

9. Sections 305.21 through 305.57 are removed and reserved.

10. A new § 305.97 is added to read as follows:

§ 305.97 Paternity establishment percentage standard.

(a) Definition. When used in this section:

Applicable number of percentage points means three percentage points multiplied by the number of fiscal years between fiscal year 1989 and the fiscal year being evaluated.

Paternity establishment percentage means the number of children receiving services under title IV-A or IV-D of the Act who were born out of wedlock and for whom paternity has been established, divided by the total number of children receiving services under title IV-A or IV-D of the Act who were born out of wedlock.

Total number of children does not include any child who is a dependent child by reason of the death of a parent or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate under § 232.41 of this chapter.

(b) For purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must, for any fiscal year beginning on or after October 1, 1991, have a paternity establishment percentage which equals or exceeds, on the last day of the fiscal year:

(1) 50 percent;

(2) The paternity establishment percentage of the State for fiscal year 1988 (baseline data calculated as of December 31, 1988), increased by the applicable number of percentage points; or

(3) The paternity establishment percentage determined with respect to all States for such fiscal year.

11. Section 305.98 is amended by revising paragraph (d) to read as follows:

§ 305.98 Performance indicators and audit criteria.

(d) The scoring system provided in paragraph (c) of this section will be described and updated periodically by the Office in instructions.

12. Section 305.99 is amended by revising paragraph (b)(2) to read as follows:

§ 305.99 Notice and corrective action period.

(b) * * *

(2) Identify any audit criteria listed in § 305.20(a)(3) of this part that the State met only marginally [that is, in 75 to 80 percent of cases reviewed for criteria in § 305.20(a)(3)];

[FR Doc. 93-21595 Filed 9-8-93; 8:45 am] BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The purpose of this notice is to terminate rulemaking regarding petitions to amend Standard No. 208, Occupant Crash Protection, to prohibit certain types of automatic safety belts. The agency's evaluation has indicated that each type of automatic protection, including the particular automatic belts that were the subject of these petitions, has a positive "best estimate" of actual fatality reduction. Even if additional data or analysis ultimately indicated that there were any significant differences in the effectiveness of automatic belts in new vehicles, those differences may become moot as most automatic belts are replaced by air bags with manual lap/shoulder belts under the "Intermodal Surface Transportation Efficiency Act of 1991." That Act mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the mid to late 1990's.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: In 1989-1990, NHTSA received three petitions to amend Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, to prohibit several types of automatic belts. The petitioners alleged various shortcomings in the safety of these belts. On February 28, 1989, the Insurance Institute for Highway Safety (IIHS) submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 208,

Occupant Crash Protection, to prohibit the use of detachable automatic safety belts. The IHS petition was granted on August 4, 1989.

On December 22, 1989, Dr. Alan Morris submitted a petition for rulemaking to amend Standard No. 208 to prohibit door-mounted automatic lap/shoulder belts. This petition was granted on February 14, 1990.

On February 20, 1990, Dr. Alan Morris submitted a second petition for rulemaking to amend Standard No. 208 to prohibit motorized automatic shoulder belts. This petition was granted on June 11, 1990.

NHTSA granted these three petitions, with the understanding that further agency action would await the completion of the planned evaluation of the various types of occupant protection systems. On June 25, 1992, the agency released the interim report "Evaluation of the Effectiveness of Occupant Protection." In the evaluation, the agency estimated the fatality reduction effectiveness of various types of automatic restraints compared to that of manual belts at 1983 usage rates. The agency's evaluation indicated that each type of automatic protection, including the particular automatic belts that were the subject of these petitions, has a positive "best estimate" of actual fatality reduction compared to manual belts at 1983 usage rates. The evaluation also compared the effectiveness of different types of belts in preventing ejection. The evaluation indicated that there is no evidence that automatic belts have increased the rate of ejection. Hence, the preliminary evidence does not support the petitioner's assertions of reduced effectiveness and other shortcomings in various types of automatic belts.

In addition, the "Intermodal Surface Transportation Efficiency Act of 1991" (Pub. L. 102-240) was signed into law on December 18, 1991. This law mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the mid to late 1990's. Hence, even if additional data ultimately indicated that there were any significant differences in the effectiveness of automatic belts in new vehicles, those differences could become moot as most automatic belts are replaced by air bags with manual lap/shoulder belts.

Therefore, the agency is terminating rulemaking on these three petitions.

Issued on September 2, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-21872 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-60-M

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Petition for Rulemaking; Denial

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Petition for rulemaking; denial.

SUMMARY: The purpose of this notice is to announce the denial of a rulemaking petition to amend Standard No. 208, *Occupant Crash Protection*, to require a warning light to indicate when lap belts in vehicles with automatic safety belts are not fastened. The Intermodal Surface Transportation Efficiency Act of 1991 mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the late 1990's. Hence, the agency expects any safety concerns with 2-point automatic belts to become moot as automatic belts are replaced by air bags with manual lap/shoulder belts. Therefore, this petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4911.

SUPPLEMENTARY INFORMATION: On October 29, 1992, Mr. Mark E. Goodson, of Denton, Texas, submitted a petition for rulemaking to amend Standard No. 208, *Occupant Crash Protection*, to require a warning light to indicate when lap belts in vehicles with 2-point automatic safety belts are not fastened. Mr. Goodson believes that "(i)f the user forgets, or intentionally does not engage the lap belt, the virtues of a 3 point restraint are lost, and the occupant risks serious personal injury should a collision occur." Mr. Goodson's petition acknowledges that a warning light would only address the issue of users who forget to engage the lap belt.

On July 17, 1984, Standard No. 208 was amended to require automatic crash protection in all passenger cars manufactured on or after September 1, 1989 (49 FR 28962). On March 26, 1991, Standard No. 208 was amended to require automatic crash protection in all trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 8,500 pounds or less

and an unloaded vehicle weight of 5,500 pounds or less (56 FR 12472). The March 26, 1991 amendment provided for a phase-in of these requirements, with 100 percent compliance required for all vehicles manufactured on or after September 1, 1997.

Vehicles equipped with automatic crash protection protect their occupants by means that require no action by vehicle occupants. Compliance with the automatic crash protection requirements of Standard No. 208 is determined in a dynamic crash test. That is, a vehicle must comply with specific injury criteria, as measured on a test dummy, when tested by this agency in a 30 mph barrier crash test. At this time, manufacturers are not required to use a specific type of automatic crash protection to meet the requirements of Standard No. 208. There are several different types of automatic belts available, including systems which comply with the dynamic test requirement using only a 2-point automatic belt. Manual lap belts which are installed with these systems are not required by any Federal Motor Vehicle Safety Standard.

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240), was signed into law. This law mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the late 1990's. The current industry estimates indicate that at least 90 percent of all passenger cars will have driver and passenger side air bags in model year 1995, three years earlier than the date mandated by law. The agency expects any safety concerns with 2-point automatic belts to become moot as automatic belts are replaced by air bags with manual lap/shoulder belts. Given the limited time until automatic belts are replaced by air bags, NHTSA believes that any problems can be addressed by public education efforts. Indeed, the agency has already done so, by issuing a news release on October 5, 1992, stating that "drivers and passengers of cars equipped with front-seat automatic shoulder belts should also use the manual lap belt for maximum protection * * * NHTSA will continue to periodically remind consumers of the need to wear the manual lap belt which accompanies some forms of automatic belts. Therefore, the agency is denying this petition.

Issued on September 2, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-21873 Filed 9-8-93; 8:45 am]

BILLING CODE 4010-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1010-AB97

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for the Arroyo Southwestern Toad (*Bufo microscaphus californicus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act), gives notice that a public hearing will be held on the proposed endangered status for the arroyo southwestern toad (*Bufo microscaphus californicus*) and that the comment period is extended. The Service will allow all interested parties to submit oral and written comments on the proposal during the hearing and comment period. A proposed rule for this species was published in the *Federal Register* on August 3, 1993 (58 FR 41231).

DATES: The comment period on the proposal is extended until October 15, 1993. The public hearing will be held from 6 to 8 p.m. on October 4, 1993, in Camarillo, California. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the U.S. Minerals Management Service Building, 770 Paseo Camarillo, First Floor, Camarillo, California. Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (telephone 805/644-1766). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cathy R. Brown at the Ventura Field Office (see ADDRESSES Section).

SUPPLEMENTARY INFORMATION:

Background

The arroyo southwestern toad historically occurred in riparian wetlands of southern California, mainly west of the Mojave desert from San Luis Obispo County, California, to northwestern Baja California, Mexico. Habitat requirements include sandy stream terraces adjacent to shallow pools. Once widely distributed in coastal southern California rivers, the arroyo southwestern toad has been extirpated from an estimated 75 percent of its former range. This species is presently restricted to small, isolated populations in Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino, Riverside, and San Diego Counties, and northwestern Baja California, Mexico. Only 2 of the 15 extant populations south of Ventura are known to contain more than a dozen adults. Factors contributing to the decline and local extinction of the arroyo southwestern toad include dam construction, artificial flow regulation, habitat inundation, suction dredging, off-highway vehicle activities, native and introduced predators, limited opportunities for recolonization when eliminated from a site by fire, and drought.

Subsection 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to the proposed rule, the Service received one request for a public hearing. As a result, the Service has scheduled a public hearing on Monday, October 4, 1993, from 6 to 8 p.m., at the U.S. Minerals Management Service Building, 770 Paseo Camarillo, First Floor, Camarillo, California. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. However, no limits exist for written comments or materials presented at the hearing or mailed to the Service. The comment period closes on October 15, 1993. Written comments should be submitted to the Service office identified in the ADDRESSES section.

Author

The primary author of this notice is Cathy R. Brown, Ventura Field Office (see ADDRESSES section).

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16

U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 2, 1993.

William E. Martin,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 93-21933 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 930819-3219; I.D. 081793B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes changes in the management regime for the Gulf of Mexico migratory group of king mackerel in the eastern zone, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Specifically, this rule proposes trip limits for Gulf group king mackerel in each of two sub-zones of the eastern zone, the Florida east coast and Florida west coast sub-zones, which are being created by a separate rulemaking. The intended effects of this rule are to reduce daily catches, thus preventing market gluts and extending the season, and to reduce the likelihood of exceeding the king mackerel quotas. **DATES:** Written comments must be received on or before September 24, 1993.

ADDRESSES: Comments may be mailed to Mark F. Godcharles, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of the regulatory impact review/initial regulatory flexibility analysis/environmental assessment supporting this action, and of a minority report submitted by three members of the Gulf of Mexico Fishery

Management Council (Gulf Council) objecting to this action, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, 813-228-2815.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

During the last fishing year (July 1, 1992, through June 30, 1993), the commercial quota for king mackerel from the eastern zone of the Gulf of Mexico migratory group was reached, and the fishery was closed on January 13, 1993, before fishermen on the east coast of Florida could harvest an equitable share. (During the period November 1 through March 31 each fishing year, the eastern zone of Gulf migratory group king mackerel extends from a line directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to a line directly east from the Volusia/Flagler County, Florida, boundary (29°25'N. latitude).) Disproportionate catches between Florida's east and west coast fisheries were caused, in part, by a Federal Court ruling that prevented Florida from enforcing its trip/landing limits and regional closures that would have divided equally the Federal eastern zone quota of Gulf group king mackerel between Florida's east and west coast commercial fisheries. The early fishery closure caused a record low catch of king mackerel in the east coast fishery. The record low catch was determined to constitute social and economic emergencies. The South Atlantic Fishery Management Council requested, and NMFS implemented, an emergency interim rule (58 FR 10990, February 23, 1993) to reopen the commercial king mackerel fishery in the EEZ off the east coast of Florida between the Volusia/Flagler and Dade/Monroe County boundaries from February 18, 1993, through March 26, 1993, under a possession limit of 25 fish per vessel per day.

The conditions that precipitated the social and economic emergencies during the last fishing year continue to exist.

The Councils have initiated action to address these conditions. Specifically, the Councils have proposed trip limits applicable to the commercial harvest of king mackerel from the eastern zone and the establishment of separate, equal quotas for Florida's east coast and west coast fisheries. However, the equal-quota measure requires an amendment to the FMP, which cannot be completed and implemented in time for the 1993/94 winter fishery beginning November 1, 1993, by means other than emergency rule. Accordingly, the Gulf Council requested, and NMFS is processing, an emergency interim rule to create sub-zones and implement quotas of 865,000 pounds (392,361 kg) for each of the Florida east coast and Florida west coast fisheries.

Under the FMP's framework procedure for amending certain management measures, the Gulf Council, with the concurrence of the South Atlantic Fishery Management Council, has proposed that vessel trip limits be established for the harvest of Gulf group king mackerel from each of the two sub-zones of the eastern zone. The Florida east coast sub-zone would encompass the waters off the east coast of Florida from a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) to a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25'N. latitude). The Florida west coast sub-zone would encompass the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) to a line extending directly south from the Alabama/Florida boundary (87°31'06"N. latitude).

In the Florida east coast sub-zone, the Gulf Council recommends daily vessel possession and landing limits of 50 king mackerel until 432,500 pounds (196,181 kg) of king mackerel (50 percent of the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone, at which time the daily vessel possession and landing limit would be 25 king mackerel. The 25-fish limit would remain in place until 865,000 pounds (392,351 kg) of king mackerel (the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone and the commercial king mackerel fishery in the sub-zone is closed.

Since 1985, Gulf migratory group king mackerel in the winter fishery off the Florida east coast have been harvested primarily by small hook-and-line troll vessels. Approximately 150 fishermen operate in this fishery and are

dependent almost entirely on the winter king mackerel fishery, as they have few alternative fisheries available to them. The trip limits proposed in this rule would extend the fishing season and would maximize the economic benefits by preventing market gluts and the resulting lower prices. In addition, reduced daily trip limits would enhance quota monitoring so that the fishery could be closed in a timely manner when the Florida east coast sub-zone quota was reached.

In the Florida west coast sub-zone, the Gulf Council recommends unlimited daily vessel possession and landing limits of king mackerel until 648,750 pounds (294,271 kg) of king mackerel (75 percent of the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone, at which time the daily vessel possession and landing limit would be 50 king mackerel. The 50-fish limit would remain in place until 865,000 pounds (392,351 kg) of king mackerel (the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone and the commercial king mackerel fishery in the sub-zone is closed.

In recent years, Gulf migratory group king mackerel in the winter fishery off the Florida southeast, south, and west coasts have been harvested by both net boats and by small hook-and-line troll vessels. To maintain the approximate split between these two harvesting methods, the Florida west coast sub-zone would have no daily vessel trip limits until 75 percent of the sub-zone quota was reached. Both net boats and the small hook-and-line troll vessels would be able to operate effectively until the 50-fish trip limit was implemented. Because net boats cannot operate effectively at such trip limits, the remainder of the available harvest would be expected to be taken primarily by the small hook-and-line troll vessels. Under the 50-fish trip limit, the remainder of the fishing season would be extended, market gluts and resultant lower prices would be prevented, and the fishery could be closed in a timely manner when the Florida west coast sub-zone quota was reached.

The recommended changes are within the scope of the management measures that may be adjusted by the framework procedure, as specified at 50 CFR 642.29. The Director, Southeast Region, NMFS, initially concurs that the Councils' recommendations are necessary to protect Gulf group king mackerel and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly,

the Council's recommended changes are published for comment.

The sub-zones and quotas to which the trip limits would apply are being implemented by the emergency rule procedure of section 305(c) of the Magnuson Act. The trip limits of this rule would apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast sub-zones and separate quotas are established in each. Under the emergency rule, the sub-zones and quotas will not be effective beyond March 31, 1994.

A minority report submitted by three members of the Gulf Council objected to this framework regulatory amendment. Specifically, the three members objected to the implementation of the 50-fish, early season trip limit in the Florida east coast zone because they contend that it provides an unfair economic allocation and prevents participation of net fishermen. NMFS will address the matters contained in the minority report, and comments received during the public comment period, in the final rule. Copies of the minority report are available (see ADDRESSES).

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of \$100 million used as a guideline for a "major rule."

The Councils prepared a regulatory impact review (RIR) on this action, the conclusions of which are summarized as follows. With the proposed trip limits in the Florida east coast sub-zone, (1) king mackerel would command higher prices; (2) the effects in terms of producer surplus are inconclusive; (3) the direction of the effects on total consumer benefits is unknown, but changes in consumer surplus would be small; (4) there would be relatively higher full-time equivalent employment; and (5) the cost of the management action, including the increased costs of enforcing the trip limits, would approximate \$121,208. The analysis did not reach a conclusion as to the likely changes in overall net benefit. With the proposed trip limits in the Florida west coast sub-zone, (1) there would be relatively higher prices for king mackerel; (2) there would likely be no changes in producer or consumer surplus; and (3) there would likely be positive changes in overall net benefit.

Copies of the RIR are available (see ADDRESSES).

The Councils prepared an initial regulatory flexibility analysis (IRFA), which concludes that this proposed rule, if adopted, will have significant effects on small entities. The proposed trip limits are expected to increase the benefits for some participants in the industry and decrease the benefits for other participants. Overall, benefits are expected to be increased. All participants in the industry are small entities. Copies of the IRFA are available (see ADDRESSES).

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 1993.

Samuel W. McKeen,
Program Management Officer, National
Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.7, a new paragraph (u) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(u) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.31(a), or transfer at sea such king mackerel, as specified in § 642.31(e).

* * * * *

3. A new § 642.31 is added, to read as follows:

§ 642.31 Commercial trip limits for Gulf group king mackerel in the eastern zone.

The provisions of this section apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast zones and separate quotas are established in each. See § 642.25(a)(1) for such zones and quotas.

(a) Trip limits.

(1) *Florida east coast zone.* In the Florida east coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for

which a commercial permit has been issued for king and Spanish mackerel under § 642.4.

(i) From November 1, each fishing year, until 50 percent of the zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(ii) From the date that 50 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(2) *Florida west coast zone.* In the Florida west coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4.

(i) From July 1, 1993, until 75 percent of the zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(b) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2) when the requisite harvest levels have been reached or are projected to be reached.

(c) *Closures.* A closure of the Florida east coast zone or the Florida west coast zone will be effected as specified in § 642.26(a). During the period of effectiveness of such a closure, the provisions of § 642.26(b) apply.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a)(1) or (a)(2)(ii) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 93-21927 Filed 9-8-93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 58, No. 173

Thursday, September 9, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 3, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

- (1) Agency proposing the information collection;
- (2) Title of the information collection;
- (3) Form number(s), if applicable;
- (4) How often the information is requested;
- (5) Who will be required or asked to report;
- (6) An estimate of the number of responses;
- (7) An estimate of the total number of hours needed to provide the information;
- (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Food and Nutrition Service
7 CFR Part 210—National School Lunch Program (Addendum)
Recordkeeping; On occasion;
Monthly; Semi-annually; Annually;
Biennially
State or local governments; Federal agencies or employees; Non-profit institutions; 2,163,078 responses;
22,221,961 hours

Angella Love/Winnie McQueen (703)
305-2607

Extension

- Foreign Agricultural Service
Declaration of Sale
FAS-359
On occasion
Businesses or other for-profit; Small businesses or organizations; 200 responses; 50 hours
James Chase (202) 720-5780

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93-21997 Filed 9-8-93; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Exemption of South Fork Sullivan Blowdown Salvage Timber Sale From Appeal; Kootenai National Forest, MT

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and to reduce the risk of wildfire.

EFFECTIVE DATE: Effective on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon, Rexford District Ranger; Kootenai National Forest; 1299 Hwy. 93 North; Eureka, MT 59917. Telephone: 406-296-2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 10 acres of timber in the South Fork Sullivan Creek area. The

wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the South Fork Sullivan Creek area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative will salvage approximately 50 MBF of dead and damaged timber from approximately 10 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage project is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the *Federal Register* that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the South Fork Sullivan Blowdown Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: September 2, 1993.

Christopher D. Risbrudt,
Deputy Regional Forester, Northern Region.
[FR Doc. 93-21931 Filed 9-8-93; 8:45 am]

BILLING CODE 3410-11-M

Exempt Decision for Lower Montane Timber Sale From Appeal; Wallowa-Whitman National Forest, Baker County, OR

AGENCY: USDA, Forest Service.

ACTION: Notice to exempt a decision from administrative appeal.

SUMMARY: Notice is hereby given that the decision to implement the Lower Montane Timber Sale on the Baker Ranger District of the Wallowa-Whitman National Forest is exempt from appeal. This conforms with provisions of 36 CFR 217.4(a)(11) as published in the Federal Register on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne Rainville, Timber Staff, Wallowa-Whitman National Forest, 1550 Dewey Avenue, (P.O. Box 907), Baker City, Oregon, 97814, phone (503) 523-6391.

SUPPLEMENTARY INFORMATION: In the 1970's, the Lower Montane area experienced a high level of bark beetle activity in the overstocked young pine stands. This activity was effectively suppressed by precommercially thinning the stands susceptible to beetle invasion. Now, 20 years later, these same stands and some adjacent stands have grown enough to reach overstocked levels once again.

As early as 1989, a low level of beetle activity was noted in the overstocked stands within the Lower Montane area. Reconnaissance of potential beetle activity areas in the summer of 1992 noted an ever-increasing amount of beetle-killed trees. Some ponderosa pine stands were showing 20 percent and more of the trees killed.

An interdisciplinary team (IDT) was assigned in the fall of 1992 to examine the extent of the insect attack. Public comments were solicited. At the same time, the IDT analyzed the salvage potential and methods of stocking level control needed to reduce or contain beetle populations. It was recommended that stocking level work in pine stands with heavy mountain pine, western pine, and *Ips* beetle infections start as soon as possible.

It is imperative that portions of this project area, which are or have reached epidemic insect levels, be treated with "prevention" tactics. Integral parts of the project will be selective removal of green trees and introduction of prescribed fire to assist with ecosystem restoration.

This proposal includes commercial thinning, selective harvest, and precommercial thinning. Salvage will

take dead and dying trees as well as green trees, if there is evidence of infestation or if needed to be removed for stocking control. The project was specifically designed to facilitate removal of infested ponderosa pine, utilize dead and dying trees, and improve overall timber stand health.

About 5 million board feet will be harvested from about 3,000 acres. Some of these acres will also be precommercially thinned (200 acres) and residual fuels burned (about 2,600 acres). In addition, precommercial thinning (about 2,500 acres) and ecosystem burning (about 900 acres) will take place outside the cutting units. No new roads will be constructed.

Speed of harvest is essential in order to salvage the timber while the logs remain merchantable and retain high quality value (before blue stain and checking set in). The average size of the insect-infested timber is about 12 inches. In general, the smaller the diameter of the tree, the more rapidly it will deteriorate.

Speed is also essential in controlling the insect infestation. The Zone Entomologist indicates that prompt action in removing beetle-infested trees and thinning residual stands are the only possibility of quelling this outbreak and preventing additional, resource losses. Zone Entomologist states further, " * * * unless these green-tree attacks are identified, marked, and removed before beetle flight next spring (should be removed before May 1), all the efforts to control this outbreak will essentially be ineffective * * * Priority for cutting should always first be to remove the 'green-infested' trees, then other trees that do not currently contain living beetle broods."

Biological evaluations have been completed for all proposed, endangered, threatened, and sensitive plant, wildlife, and fish species within the affected project area. This project is near a bald eagle management area and does not propose any activities at this time within the management area. Cultural resource surveys have been completed for the project. No known Cultural sites will be impacted by the project as planned. The project is not within a salmon habitat area and as such no consultation with the U.S. National Marine Fisheries Service is necessary. The project is not within a roadless area.

The project work is designed to accomplish the objectives as quickly as possible, protect area resources, minimize the amount of merchantable salvage volume lost, the amount of insect kill over time, and the amount of potential growth lost. This salvage is important to forest rehabilitation and

recovery in the Lower Montane area and meeting Desired Future Conditions. The severity of damage to stands requires immediate action to initiate stand recovery. Based upon the analysis for this Lower Montane Timber Sale, I have determined that good cause exists to exempt this timber sale from administrative appeal (36 CFR part 217). Under this regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfire * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the Federal Register, the Decision Notice for the Lower Montane Timber Sale may be signed by the Wallowa-Whitman Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: September 2, 1993.

Jerry L. Monesmith,
Acting Deputy Regional Forester.
[FR Doc. 93-21932 Filed 9-8-93; 8:45 am]
BILLING CODE 3410-11-M

Advisory Council Meetings; Allegheny Wild and Scenic River, Allegheny National Forest, Pa

AGENCY: Forest Service, USDA.
ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 p.m., Tuesday, September 21, 1993, at the Emlenton Civic Club, Emlenton, PA. The Council will continue to discuss recommendations for meeting draft management goals for the river between Franklin and Emlenton.

The Northern Advisory Council will meet at 7 p.m., Wednesday, September 22, 1993, at the Holiday Inn, Oil City, PA. The Northern Council will continue its discussion of maintaining and enhancing scenic quality in the river corridor between Kinzua Dam and Oil City.

Meetings are open to the public. A sign language interpreter will be provided if requested by September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723-5150 or 814/726-2710 (TTY).

Dated: August 26, 1993.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93-21928 Filed 9-8-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of an amendment to Permit 871, Public Service Electric and Gas Company (P548).

SUMMARY: On July 28, 1993 (58 FR 41736), the Public Service Electric and Gas Company (P548) was issued Permit 871 to conduct scientific research on ten loggerhead (*Caretta caretta*), two Kemp's ridley (*Lepidochelys kempii*), and two green (*Chelonia mydas*) sea turtles, as authorized by the Endangered Species Act of 1973 (ESA) 16 U.S.C. 1531-1543 and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217-222).

Notice is hereby given that on August 25, 1993, as authorized by the ESA, NMFS issued Amendment #1 to Permit 871, to include a reporting requirement and a general condition which should have been a part of the original permit, and to specify that the number of sea turtles authorized to be taken is on an annual basis.

Issuance of this amendment, as required by the ESA, was based on a finding that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This amendment was also issued in accordance with and is subject to parts 217-222 of title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, amendment, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713-2322); and National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9250).

Dated: August 25, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, Notional Marine Fisheries Service.

[FR Doc. 93-21926 Filed 9-8-93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Staff

Ms. Judy Ann F. Miller

Mr. Donald J. Campbell

Brig Gen John A. Bradley

Others

Dr. George R. Abrahamson

Brig Gen Frank B. Campbell

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93-21940 Filed 9-8-93; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Proposed Revision to the International Personal Property Rate Solicitation I-2, Item 441, and a Revision to the Personal Property Traffic Management Regulation, DOD 4500.34R, Appendix A, Tender of Service

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: Beginning October 1, 1993, the MTMC will revise the International Personal Property Rate Solicitation I-2, Item 441, to require all household goods shipping containers used in Codes 4, 5, 6, and T international services between Germany and the Continental United States (CONUS) be sealed with metal seals at the origin pick-up point, unless permission to seal the containers at the warehouse is given by the origin personnel property shipping office.

MTMC will also revise the Personal Property Traffic Management Regulation, DOD 4500.34R, Appendix A, TOS, to require carriers and their agents to report incidents of missing items, theft, pilferage, and vandalism of DOD-sponsored personal property shipments to civilian law enforcement authorities and to the origin and destination

Personal Property Shipping Offices' (PPSOs). The destination PPSO will be afforded an opportunity to inspect the shipment and complete a DD Form 1841. In cases when apparent theft, pilferage, or vandalism which have not been reported to the PPSO are detected at the time of delivery, such incidents will be annotated on the DD Form 1840 and military or civilian police or investigation agencies will be notified as appropriate.

DATES: Comments must be submitted on or before October 12, 1993.

ADDRESSES: Comments on the proposed revision should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP-QEC, 5611 Columbia Pike, room 629, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Wells, MTOP-QEC, (703) 756-1598.

SUPPLEMENTARY INFORMATION: These actions are taken to increase the integrity and security of DOD-sponsored shipments and thereby reduce loss and damage to service members' personal effects. Loss and damage due to theft and vandalism have reached unacceptable levels and additional security measures are desired.

The revised item will read as follows: "Item 441. Sealing of Containers: All household goods (HHGs) containers used for movement between Germany and CONUS will be sealed at the origin pickup point with accountable metal seals secured by non-reversible nails or screws. Four seals, as a minimum, are required for each HHG container. These seals will secure the access overlap door and side panels. If only some seals out of a set are used, the unused seals will be destroyed at the time of sealing or placed on the container. They will not be used on any other container or shipment. Seal numbers will be recorded on the household goods inventory by the carrier representative, either beside the container number or annotated by individual container number on the last page of the inventory. Shipments other than Germany-CONUS will be sealed with accountable paper, vinyl or metal seals. External unaccompanied baggage shipping containers will be sealed with no less than two accountable paper or vinyl seals."

Since these changes will directly involve the carrier industry, MTMC requests public comment on the proposed revisions. MTMC is providing notice of these proposed revisions and offering a 30-day period for receiving and considering the views of all interested parties. Timely written

comments will be reviewed and considered for incorporation prior to publication of the final change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-21935 Filed 9-8-93; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Record of Decision for Facilities Development and Relocation of Navy Activities to the Territory of Guam From the Republic of the Philippines

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500-1508), the Department of the Navy announces its decision to develop facilities and to relocate Navy activities to the Territory of Guam from the Republic of the Philippines.

U.S. Navy facilities in the Philippines were closed in 1992 because of a decision by the U.S. and Philippines governments not to renew the lease of U.S. bases. As a result, certain operations and support functions will be permanently relocated to Guam to support the Navy's mission in the western Pacific. Actions included in this decision are in two categories: (1) Changes in military activities on Guam because of the relocation of various commands and (2) construction of permanent facilities required to accommodate the relocation. Approximately 1,380 Navy billets or positions have been relocated to Guam and an estimated 1,450 dependents will ultimately accompany personnel in those billets. Until permanent facilities can be built, most of the relocated military personnel are being temporarily accommodated in existing facilities. This use of temporary facilities was necessary because of the short time available for withdrawal from the Philippines.

Permanent changes in activities will include relocation of the Fleet Logistics Support Squadron to Andersen Air Force Base, increase in ship port calls to the Naval Station, relocation of the Military Sealift Command Subarea Commander for Southeast Asia to Guam, increase in volume of supplies handled by the Fleet Industrial Support Center, increase in work at the Ship Repair Facility, relocation of the Naval Special Warfare Unit One (NSWU-1) and Explosive Ordnance Disposal Mobile Unit Five (EODMU-5), expansion of existing activities at the Naval Magazine, relocation of the Naval Air Pacific Repair Activity, and

augmentation of personnel at Naval Air Station Agana, Naval Hospital, and Naval Oceanography Command Center/Joint Typhoon Warning Center.

Approximately 25 new facilities will be constructed, with 19 sited in the Apra Harbor area and the remainder at Andersen AFB, the Naval Magazine, and on Nimitz Hill. Facilities at Andersen include a hangar/apron/washrack complex and renovation of quarters for unaccompanied personnel. Projects in the Apra Harbor area include 300 units of family housing, expansion of the Orote Power Plant, modifications to the Sewage Treatment Plant, additions/alterations to the child care center, NSWU/EODMU facilities, gantry crane and rails, and various administration, storage, and support facilities. Missile magazines and an inert materials storehouse will be constructed at the Naval Magazine and the Oceanography Building on Nimitz Hill will be renovated.

Draft and Final Environmental Impact Statements (DEIS/FEIS) were prepared by the Navy and distributed to federal and territorial agencies and elected officials, and to the interested public for review and comment. These documents described the potential environmental impacts associated with the actions described above and provided opportunity for comment. Two public hearings were conducted on 20 April 1993 and no oral comments were received. The FEIS responded to all written comments received on the DEIS and was distributed to the public for a 30-day review period that ended 30 August 1993. The Navy has decided to implement the actions that were presented as preferred environmental alternatives in the FEIS.

This action will not result in any unmitigatable significant environmental impacts. The community infrastructure, including roads, potable water, and sanitary sewer service, is projected to provide acceptable levels of service. Community services such as police, fire, and emergency medical will not be adversely impacted. School districts have adequate capacity, based on existing capacity and programmed improvements, to accommodate the projected level of students.

The Guam Environmental Protection Agency has granted a Part B permit under the Resource Conservation and Recovery Act for the Public Works Center and hazardous waste conforming storage facility. The Navy hereby commits to implementing the conditions of that permit, including the requirement for reporting hazardous waste minimization efforts. The Navy will also incorporate, as appropriate, the

U.S. EPA interim guidance for waste minimization. The Navy has established a history of pollution prevention and is prepared to set in motion steps to implement the recently signed Executive Order 12856. Any asbestos-related work necessary for these projects will be performed in compliance with all appropriate federal and territorial regulations.

There is no dredging requirement to implement the actions covered by this decision. However, if a future dredging requirement for Guam facilities arises, the Navy will fully coordinate such an effort with resource/regulatory agencies and will prepare the appropriate NEPA documentation.

The Navy has conducted formal consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) in compliance with the Endangered Species Act and has received biological opinions of "no jeopardy" and "incidental take statements" from both agencies. The Navy hereby commits to meeting the terms and conditions established by the NMFS and the USFWS as the basis for their decisions.

A Memorandum of Agreement (MOA) has been developed which ensures appropriate management and protection of historic resources listed, or eligible for listing, on the National Register of Historic Places under the criteria established by the National Historic Preservation Act of 1966, as amended, and its implementing regulations (36 CFR part 800). The MOA has been signed by the Navy, the Guam Historic Preservation Officer, and the Advisory Council on Historic Preservation and is now effective. The Navy hereby commits to implementing the stipulations contained in that MOA.

Questions regarding this Record of Decision may be directed to Pacific Division, Naval Facilities Engineering Command (Makalapa), Pearl Harbor, Hawaii 96860-7300 (Attn: Mr. Stan Uehara), telephone (808) 471-9338.

Dated: September 2, 1993.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

[FR Doc. 93-22006 Filed 9-8-93; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Golden Field Office; Federal Assistance Award to California Institute of Technology

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the California Institute of Technology for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. Matthew A. Barron, Contract Specialist.

SUPPLEMENTARY INFORMATION: For the past four years, the applicant has been conducting research to develop several general approaches to enhancing enzyme performance in nonnatural, but technologically useful, environments. This research targets three specific enzymes for initial engineering studies. Protein design and mutagenesis methods will be used to improve catalyst stability, alter substrate specificities, and enhance catalytic activity in nonnatural environments. Successful completion of this research would produce (1), a set of novel enzyme catalysts for chemical synthesis applications, and (2), the further development of generic engineering strategies that can be implemented in other industrially important enzymes.

The research conducted at the California Institute of Technology has led to the development of generally applicable and easy to implement strategies for improving enzyme performance in industrial environments. To date, the research has focused on the enzyme *Subtilisin*, a bacterial serine protease. This effort has been supported by the DOE Office of Industrial Processes. This recipient has been widely recognized for accomplishments achieved in enzyme stabilization and activation in unusual environments.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical experience. DOE knows of no

other organization which is conducting or is planning to conduct research on enzyme stabilization and activation in unusual environments as proposed by the applicant.

Funding in the amount of \$999,886 is to be provided by DOE. The anticipated term of the proposed grant shall be sixty months from the effective date of the award.

Issued in Chicago, Illinois on August 9, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93-22009 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-M

Golden Field Office; Federal Assistance Award to Industra Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with Industra Inc. for an impartial comparison of new and emerging technologies with traditional black liquor combustion and chemical recovery as practiced in kraft pulping operations in the paper industry.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden, Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M.A. Barron, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: A number of new technologies to modify or replace the traditional Tomlinson, furnace for recovery of chemicals and heat from black liquor in the kraft pulping process have been developed and many more are under development. The paper industry has great interest in these developments, but they are concerned as to whether the new technologies are safe and efficient. In response to this concern, Industra proposes to conduct an evaluation and analysis of pertinent technologies for kraft black liquor chemical recovery. This analysis and evaluation will include current and new recovery systems and projections regarding future systems that will become available to the industry. Industra has developed, and continues to maintain, a unique capital cost database that will be used to develop implementation cost estimates for each option.

The application has been found to be meritorious in a general evaluation in accordance with 10 CFR 600.14(d). The proposed project represents and utilizes a unique methodology and would not be eligible for financial assistance under a recent, current, or planned solicitation, and a competitive solicitation is inappropriate.

The project is estimated to cost \$60,000 all of which will be provided by DOE. The duration of the project is estimated at 6 months.

Issued in Chicago, Illinois, on August 9, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93-22010 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-M

Golden Field Office; Federal Assistance Award to Southwest Research Institute

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the Southwest Research Institute for continuing research efforts to develop and demonstrate natural gas-fueled railway locomotives. This is a portion of DOE's Fuels Utilization Program of its Transportation Technologies Program, which seeks to improve fuel efficiency, reduce energy costs, and reduce air emissions in transportation operations. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Ms. Ruth E. Adams, Contract Specialist.

SUPPLEMENTARY INFORMATION: For the past twelve years, the applicant has been conducting engine research for the Association of American Railroads. The applicant is currently completing the development of a first generation gas-fueled freight locomotive engine, under contract with the Electro-Motive Division of General Motors (EMD). This engine technology will be available to this cooperative research program.

This cooperative research program is being funded by the DOE and five non-Federal entities. The DOE will be funding approximately 12% of the total project costs.

Three engine technologies will be investigated during this research program. With each technology, variables affecting engine performance (power, fuel economy, exhaust emissions, etc.) will be optimized to produce a freight engine with improved cost efficiency and a commuter passenger engine with low emissions.

In accordance with 10 CFR 600.7, it has been determined that DOE funding of this activity will enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. In addition, DOE has determined that the applicant and its cost-sharing contractor, EMD, have exclusive domestic capability to perform this activity successfully, based upon unique equipment, proprietary data, technical expertise, and other unique qualifications.

DOE funding for this four-year effort is estimated to be \$800,000. The anticipated term of the proposed grant shall be forty-eight months from the effective date of the award.

Issued in Chicago, Illinois, on August 9, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93-22007 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-M

**Chicago Operations Office;
Acceptance of Unsolicited Proposal
Structural Insulated Panel Association
(SIPA)**

AGENCY: Department of Energy.

ACTION: Notice of acceptance of an unsolicited proposal.

SUMMARY: Pursuant to 10 CFR 600.14, the U.S. Department of Energy, through the Chicago Operations Office, intends to award a grant to the Structural Insulated Panel Association (SIPA) to conduct a Design Competition for Energy Efficient Panelized Homes.

SUPPLEMENTARY INFORMATION: This project, based upon an unsolicited proposal that embodies a unique approach which will bring together for the first time in a sponsored conference those companies actively manufacturing structural insulated panels as well as those supplying material and services to manufacturers, is judged to be meritorious based upon the general evaluation factors of 10 CFR 600.14(e). The project represents a unique approach which would not be eligible for financial assistance under a recent, current or planned solicitation.

A proposed design competition will showcase the best in energy-efficient, affordable panelized houses. The results of the competition will be the honoring of buildings that demonstrate the energy conserving performance and architectural distinction of stress skin panel structures. This will encourage dissemination of information about unique, affordable buildings, and help promote stress skin panel construction through local home builder associations and utility companies through an array of outreach activities.

The project period of this award shall be 12 months and DOE support will be provided in the amount of \$35,000,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Attn: Hugh Saussy, Jr., Boston Support Office, One Congress Street, Boston, MA 02114-2021, (617) 565-9700.

Issued at Chicago, Illinois on August 10, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93-22008 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-M

**Privacy Act of 1974; Establishment of
a New Routine Use for an Existing
System of Records and Elimination of
a System of Records**

AGENCY: Department of Energy (DOE).

ACTION: Elimination of one system of records and establishment of a new routine use for an existing system.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) to publish a notice in the *Federal Register* when an existing system of records has been significantly altered. DOE proposes to (1) eliminate a System of Records and consolidate those records into an existing System of Records; (2) establish a routine use for DOE-28; and (3) provide current information on system location and records storage. The new routine use for DOE-28 will allow the disclosure of technical training records of professional employees involved in the disposal of radioactive waste to federal and state regulatory agencies which require the records to successfully perform their functions. For example, this new routine use will allow the disclosure of technical training records to the U.S. Environmental Protection Agency (EPA) for the purpose of determining compliance with the Resources Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k, and other authorized state hazardous waste program requirements. In addition, DOE

is proposing to maintain in DOE-28 records currently in DOE-80 "Quality Assurance Training and Qualification Records." DOE-28 will also include routine uses listed for DOE-80 and include machine readable media in the types of records maintained in the system. The revisions reflect this new method of storage.

DATES: The revised system of records will become effective without further notice 40 days after publication (October 19, 1993), unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments should be directed to the following address: U.S. Department of Energy, Denise Diggin, Chief of FOI/PA, AD-621, 1000 Independence Avenue, SW., Washington, DC 20585. Any comments received will be available for public inspection and copying from 9-4 in the Freedom of Information Act Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Charles R. Tierney, Director of Professional and Technical Training and Development, AD-70, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 275-6440 or Denise B. Diggin, Chief of FOI/PA, AD-621, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025 or Abel Lopez, Office of General Counsel, GC-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8618.

SUPPLEMENTARY INFORMATION: The DOE proposes to revise a system of records, DOE-28, "General Training Records." The proposed revisions include establishing a new routine use and incorporating records currently maintained in DOE-80. The new routine use will allow disclosure of training records of professional and technical DOE and DOE contractor employees involved in the processing of radioactive waste to agencies that need the information to perform certain regulatory functions. For example, the technical training records will be made available to local and state governments, the Nuclear Regulatory Commission (NRC), the EPA, and other Federal agencies for purposes of audits conducted to satisfy the requirements of the Nuclear Waste Policy Act of 1982, title 10, Code of Federal Regulations, part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," Appendix B; the NRC Review Plan for High-Level Waste Repository Quality Assurance Program

Description; the Resources Conservation and Recovery Act, 42 U.S.C. 6901-6992k; and authorized state hazardous waste program requirements. DOE-28 and DOE-80 will be consolidated to maintain training records in one system rather than in different systems.

The text of the system notice is set forth below. Issued in Washington, DC, on August 31, 1993.

Linda G. Sye,

Acting Principal Deputy Assistant, Secretary for Human Resources and Administration.

DOE-28

SYSTEM NAME:

General Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, as well as the following locations:

- U.S. Department of Energy, Allied Bendix Corporation, Kansas City Division, P.O. Box 1159, Kansas City, MO 64141.
- U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, West Mifflin, PA 15122-0079.
- U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.
- U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.
- U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.
- U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.
- U.S. Department of Energy, Naval Petroleum Reserves, P.O. Box 1, Tupman, CA 93276.
- U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83403-2068.
- U.S. Department of Energy, West Valley Demonstration Project, P.O. Box 919, West Valley, New York 14171.
- U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, LA 70123.
- U.S. Department of Energy, Yucca Mountain Project Office, 2753 South Highland Avenue, Las Vegas, NV 89109.
- U.S. Department of Energy, Office of Civilian and Radioactive Waste Management, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested and/or participated in training programs administered by DOE, other agencies, or other training organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, resume, assigned number, occupational series, training requests and authorizations, grade, organization, date of birth, social security number, home address and telephone number and special interest area, education completed, course name, justification for attending the course, direct and indirect costs of training, coded information dealing with purpose, type, source of 170; training evaluations, course evaluation forms, training examinations, training attendance records, indoctrination and training matrix, reading assignment sheets, qualifications statement, verification records of employment and education, statement of performance, position descriptions, accounting records and central personnel data file quarterly training report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Nuclear Waste Policy Act of 1982 (Pub. L. 97-425); Nuclear Waste Policy Amendment Act of 1987 (Pub. L. 100-203); Government Employees Training Act of 1958; Federal Personnel Manual Bulletin 290-15; Federal Personnel Manual, Chapter 410 and Appendix A thereto.

PURPOSE:

This system of records is maintained to ensure that employees are receiving appropriate training and certification to perform successfully in their position. Appropriate local, state and federal agencies use certain records maintained in this system to ensure Departmental compliance with other regulatory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these records may be transmitted to Federal agencies, including the Office of Personnel Management, for purposes of determining eligibility for training and as source documents for training reports; to training institutions that personnel have requested to attend; and to other Federal agencies as necessary for payment of training.

Records may be provided to state and local governments, the Nuclear Regulatory Commission (NRC), and other Federal agencies that conduct audits to determine whether DOE and contractor personnel satisfy quality assurance requirements for activities necessary to obtain a license from the NRC for the construction, operation and closing of a nuclear waste repository and/or a Monitored Retrievable Storage (MRS) facility. These activities will also include research and development, site characterization, transportation, waste packaging, handling, design, maintenance, performance confirmation, inspection, fabrication, and development and production of repository waste forms.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences or another independent organization, and deemed appropriate for such access. A researcher and all persons not employed by the U.S. Government granted access to this record shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to federal, state or local government officials where the regulatory program being implemented is applicable to the DOE or contractor program and requires that such access be provided for the conduct of the regulatory agencies activities. State and local officials who obtain access to this record shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of a DOE advisory committee for purposes of conducting a review of the DOE epidemiological program. Members of a DOE advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; machine readable media or microform.

RETRIEVABILITY:

By name and social security number

SAFEGUARDS:

Records are maintained in secured file cabinets with access limited to those whose official duties require access. Access to computer maintained records is by password only.

RETENTION AND DISPOSAL:

Training requests and authorizations are retained for 3 years and then destroyed. Other training records are maintained at a facility pursuant to the appropriate provisions of an applicable statute or are incorporated in the individual's personnel folder. Records are destroyed by magnetic erasure, shredding, burning or burial in a sanitary landfill or incinerator as appropriate.

SYSTEM MANAGER(S) AND ADDRESSES:

Headquarters: U.S. Department of Energy, Director, Professional and Technical Training Development, AD-70, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers, directors, or administrators of field locations 2 through 21 in Appendix A and those identified in this System of Records, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individuals and the individual's supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93-22012 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-P

DOE Response to Recommendation 93-5 of the Defense Nuclear Facilities Safety Board, DOE's Hanford Waste Tanks Characterization Studies

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 43 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93-5 of the Defense Nuclear Facilities Safety Board, published in the Federal Register on July 28, 1993, (58 FR 40409) concerning DOE's Hanford waste tanks characterization studies.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before October 12, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on August 19, 1993.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

August 31, 1993.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Chairman: On July 19, 1993, the Defense Nuclear Facilities Safety Board forwarded to the Department of Energy their Recommendation 93-5 which deals with Hanford Waste Tanks Characterization Studies. Recommendation 93-5 is accepted by the Department.

The Department will undertake a comprehensive reexamination and restructuring of the tanks' characterization effort and integrate the characterization effort into the systems engineering effort for the Tank Waste Remediation System.

We are developing an Implementation Plan to address the Board's recommendations, including the recommended target dates for accomplishment of specific actions. This Plan will set forth a technically sound, integrated program, while incorporating the characterization needs of retrieval, treatment, waste storage, and the Department's legal and regulatory obligations. The Implementation Plan will provide specific milestones and

dates for accomplishing the major tasks to achieve the Board's recommendations.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93-22013 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer,

Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-16AT
3. 1902-0139
4. Monitoring Program
5. Extension
6. Daily
7. Mandatory
8. Businesses or other for-profit
9. 1 respondent
10. 1 response
11. 1 hour per response
12. 1 hour
13. Stand-by authority for FERC to collect information from pipelines during natural gas supply emergencies to enable the planning of ameliorating actions.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511), which amended chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, September 2, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93-22011 Filed 9-8-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93-907-000, et al.]

Pennsylvania Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 2, 1993.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Electric Co.

[Docket No. ER93-907-000]

Take notice that on August 30, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR

385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Pemberton, New Jersey. Under such Agreement, Penelec proposes to provide supplemental power service to Pemberton through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for such supplemental power service to such delivery point for Pemberton will be the same rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allegheny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also those employed by Penelec, beginning July 30, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93-669-000).

The transmission service to deliver such Penelec supplemental power to Pemberton will be provided by JCP&L. After the adjustment necessary to reflect the difference between delivery at primary distribution voltage as opposed to delivery at transmission voltage, the rate charged by JCP&L to deliver such Penelec supplemental power to Pemberton will be comparable to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc.

Copies of the filing have been served on Pemberton.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Co.

[Docket Nos. ER93-542-000] and ER 93-543-000]

Take notice that on August 27, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing an amendment to its original filing under Docket Nos. ER93-542-000 and ER93-543-000, requesting a change in rates for service under the Agreements with Southern California Edison for: (1) Short-Term Firm Transmission Service, FERC Rate Schedule 58; (2) Interruptible Transmission Service, FERC Rate Schedule 59; and (3) Firm Transmission Service, FERC Rate Schedule 60. SDG&E

is withdrawing for filing the Interruptible Transmission Service Agreements with El Paso Electric Company, Imperial Irrigation District and the City of Burbank.

SDG&E respectfully requests, pursuant to § 35.11, waiver of prior notice requirements specified in § 35.3 of the Commission's regulations, and an effective date of January 1, 1993.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER93-902-000]

Take notice that on August 27, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing a Sales Agreement for the purchase by UNITIL Power Corporation (UNITIL Power) of Unit entitlements in the Norwalk Harbor Units No. 1 and No. 2 from CL&P.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with part 35 of the Commission's regulations.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Co.

[Docket Nos. EL93-5-000 and EL93-133-000]

Take notice that on August 28, 1993, Portland General Electric Company (PGE) tendered for filing supplemental information to its original filing under Docket Nos. EL93-5-000 and EL93-133-000. The amendment includes supplemental information requested by the Commission staff and relates to Filing Nos. 17, 19, 72, 74, 75, 76, 81 and 84 as identified by PGE in its original November 9, 1992 filing.

Copies of the supplemental information have been served on parties of record and others, as shown in the distribution list included in the filing letter.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Co.

[Docket No. ER93-905-000]

Take notice that Pennsylvania Power & Light Company (PP&L) on August 27, 1993, tendered for filing a First Supplement, dated as of August 20, 1993, to the Transmission Service

Agreement (Agreement), dated January 28, 1992 between PP&L and Northampton Generating Company, L.P. (NGC), which is on file with the Commission as PP&L's Rate Schedule FERC No. 112. The First Supplement revises the Agreement to reflect a change in the amount of output to be wheeled to Met Ed from NGC's facility from 98 MW to 110 MW. The Agreement is unchanged in all other respects.

PP&L is not requesting any notice period waivers for the Supplement. PP&L states that a copy of its filing was served on NGC and the Pennsylvania Public Utility Commission.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Co.

[Docket No. ER93-906-000]

Take notice that on August 27, 1993, San Diego Gas & Electric Company (SEG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Glendale (Glendale).

SDG&E requests that the Commission allow the Agreement to become effective on October 1, 1993, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Glendale.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER93-908-000]

Take notice that PacifiCorp on August 30, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, revisions to Exhibit B, D and H of the General Transfer Agreement, Contract No. DE-MS79-82BP90049, between PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp's Rate Schedule FERC No. 237.

The Exhibits have been revised to add or delete points of delivery and the associated transfer charges, loss factors and power factors.

PacifiCorp requests an effective date not later than sixty days from the Commission's receipt of this filing.

Copies of this filing were supplied to Bonneville and the Public Utility Commission of Oregon.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Co.

[Docket No. ER93-901-000]

Take notice that on August 27, 1993, Northeast Utilities Service Company tendered for filing a System Power Sales Agreement between the NU System Companies and Middleton Municipal Electric Department.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Co.

[Docket No. ER93-897-000]

Take notice that on August 26, 1993, Indiana Michigan Power Company (I&M) tendered for filing a revision to the Index of Purchasers contained in its FERC Electric Tariff MRS to recognize the assignment of I&M's wholesale service agreement for electric service with the City of Columbia City, Indiana to the Indiana Municipal Power Agency.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Indiana Michigan Power Co.

[Docket No. ER93-898-000]

Take notice that on August 26, 1993, Indiana Michigan Power Company (I&M) tendered for filing a revision to the Index of Purchasers contained in its FERC Electric Tariff CO-OP 1 to recognize the assignment of I&M's wholesale service agreement for electric service with the Wayne County Rural Electric Membership Corporation to the Hoosier Energy Rural Electric Cooperative, Inc. I&M's filing also updates the Index of Purchasers to recognize the acceptance of a service agreement with the Wabash Valley Power Association.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Co. of Oklahoma

[Docket No. ER93-435-000]

Take notice that on August 24, 1993, Public Service Company of Oklahoma (PSO) tendered for filing an amendment to its original filing on March 8, 1993, in this docket.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (MN), Northern States Power Company (WI)

[Docket No. ER92-302-002]

Take notice that on August 18, 1993, Northern States Power Company (NSP) tendered for filing a proposed revised rate for Service Schedule B—Peaking Power for inclusion in the Eastern

Interconnection and Interchange Agreement dated December 31, 1991, between Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and the Wisconsin Public Power Incorporated System (WPPI). This compliance filing is made pursuant to the Commission's August 3, 1993 order in Docket No. ER92-302-001.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Cambridge Electric Light Co.

[Docket No. ER93-896-000]

Take notice that on August 26, 1993, Cambridge Electric Light Company (Cambridge) tendered for filing, pursuant to § 35.15 of the Commission's Regulations, a notice of termination of FERC Electric Tariff for Partial Requirements Service, First Revised Volume No. 2 issued April 30, 1987, for effect July 1, 1985, and designated as Rate Schedule FERC No. 33. Cambridge requested waiver of the sixty day rule so that the termination would take effect immediately. In support of its request Cambridge stated that there are no customers currently taking service under this rate.

A copy of this filing has been served upon the Town of Belmont, Massachusetts and upon the Massachusetts Department of Public Utilities.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21949 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-13995T New Mexico-49]

United States Department of the Interior, Bureau of Land Management; Corrected NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 2, 1993.

Take notice that on August 16, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the Largo Gallup and Basin Dakota Fields in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 2,560 acres, more or less, all of which are administered by the Bureau of Land Management. The recommended area is described as all of sections 3, 4, 9 and 10 of Township 26 North, Range 7 West.

The notice of determination also contains BLM's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21902 Filed 9-8-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 7, with a proposed effective date of October 1, 1993.

Carnegie states that pursuant to § 154.38(d)(6) of the Commission's Regulations and Section 30.1 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, Carnegie is amending its FERC-

jurisdictional transportation rate schedules to reflect a revised Annual Charge Adjustment ("ACA") unit charge of \$0.0025 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21903 Filed 9-8-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ93-12-63-000 and TM93-12-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 1, 1993;

Forty-Sixth Revised Sheet No. 8
Forty-Sixth Revised Sheet No. 9

Carnegie states that pursuant to sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect projected purchased gas costs and projected Account No. 858 costs for the month of September 1993.

Carnegie states that the revised tariff sheets reflect the following changes in its sales rates:

(i) An increase of \$0.5882 per Dth in the commodity PGA rates under Carnegie's Rate Schedules CDS and LVWS, as well as to the maximum and minimum PGA rates under Rate Schedule SEGSS, as compared with

Carnegie's last effective PGA filing in Docket No. TQ93-10-63-000;

(ii) The removal of the PGA Surcharge rates implemented pursuant to Carnegie's 1992 Annual PGA in Docket Nos. TA92-1-63-000, et al., and

(iii) A TCA commodity rate decrease of \$0.0045 per Dth, as compared to Carnegie's last effective TCA filing in Docket No. TM93-10-63-000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21904 Filed 9-8-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-63-005]

Great Lakes Gas Transmission Limited Partnership; Compliance Filing

September 2, 1993.

Take notice that on August 27, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed revised tariff sheets, pursuant to Commission staff's request, replacing the pro forma tariff sheets filed with Great Lakes' August 2, 1993, second revised compliance filing. Great Lakes filed the following revised tariff sheets:

Original Sheets Nos. 1 through 83 establishing Great Lakes' Second Revised Volume No. 1.
Thirty-Fourth Revised Sheet No. 1 canceling Great Lakes' First Revised Volume No. 1.
Various revised tariff sheets to Great Lakes' Original Volume No. 2 conforming that volume to the changes required by the cancellation of the First Revised Volume No. 1.
Second Revised Sheet No. 1 canceling Great Lakes' Original Volume No. 3.

Great Lakes states that the Second Revised Volume No. 1 tariff sheets are identical to the pro forma tariff sheets

filed with Great Lakes' August 2, 1993, second revised compliance filing. It further states that the tariff sheets related to Original Volume No. 2 and the sheets canceling First Revised Volume No. 1 and Original Volume No. 3 are identical to the pro forma tariff sheets filed with Great Lakes' April 15, 1993, revised compliance filing. Great Lakes states that because revisions to the First Revised Volume No. 1, Original Volume No. 2, and Original Volume No. 3 sheets were not necessitated by the Commission's July 2, 1993, order,¹ revised sheets had not been filed with the August 2 filing.

Comments on the revised tariff sheets, to the extent the revised tariff sheets differ in substance from the previously filed pro forma tariff sheets, should be filed on or before September 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21905 Filed 9-8-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR93-13-000]

Gulf States Pipeline Corp.; Petition for Rate Approval

September 2, 1993.

Take notice that on August 2, 1993, Gulf States Pipeline Corporation (Gulf States) filed a petition for rate approval pursuant to § 284.123(b)(2) of the Commission's regulations. Gulf States requests that the Commission approve as fair and equitable a reservation rate of \$7.7827 per MMBtu and a commodity charge of \$0.0121 per MMBtu for firm transportation service, and a rate of \$0.268 per MMBtu for interruptible transportation service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Gulf States affirms that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. Gulf State proposes an effective date of August 1, 1993.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

¹ Great Lakes Gas Transmission Limited Partnership, 64 FERC ¶ 61,017 (1993).

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before September 20, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21906 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-177-000]

High Island Offshore System; Proposed Interim Reduction in Rates

September 2, 1993.

Take notice that on August 30, 1993, High Island Offshore System (HIOS) filed, pursuant to section 4 of the Natural Gas Act, for an interim reduction in its transportation rates to be effective as of July 1, 1993.

HIOS states that copies of the filing are being served upon all parties to this proceeding and upon all shippers on HIOS' system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21907 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-16-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

September 2, 1993.

Take notice that on August 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Ninety-Second Revised Sheet No. 4 and Fifty-First Revised Sheet No. 4.1 to its

FERC Gas Tariff, Second Revised Volume No. 1 to be effective September 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Ninety-Second Revised Sheet No. 4 and Fifty-First Revised Sheet No. 4.1 reflect an increase of 32.26 cents per MMBtu in the commodity cost of purchased gas from PGA rates contained in the quarterly PGA filing to be effective September 1, 1993 in Docket No. TQ93-15-25-000. MRT also states that since the June 30, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21908 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-73-000]

Nordic Power of Southpoint I Limited Partnership; Application for Commission Determination of Exempt Wholesale Generator Status

September 2, 1993.

On August 31, 1993, Nordic Power of Southpoint I Limited Partnership ("Applicant"), c/o Nordic Power of Southpoint, Inc., 2010 Hogback Road, Suit 4, Ann Arbor, Michigan 48105, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status.

Applicant states that it is a Michigan limited partnership which is developing an electric generating facility and certain related interconnection facilities (the "Facility", as further defined herein) which will be located in the State of Arizona. Applicant will directly own and operate the Facility. When completed, the Facility will have a net electric output of between 200 MW and 450 MW. Applicant plans to sell the net electric output of the Facility to Nevada Power Company ("NPC"), Citizens Utilities ("CU"), and the City of Anaheim ("Anaheim") at wholesale. The Facility will include power generation equipment and ancillary equipment, voltage regulation equipment and a step-up transformer and related equipment used to deliver the electric output of the Facility to the Western Area Power Authority, with which the Facility will be connected through our own line or through the local utility.

Applicant states that (i) it will directly own and may operate the Facility; (ii) it will be engaged directly and exclusively in the business of owning and/or operating the Facility and selling electricity at wholesale; (iii) the Facility will be used for the generation of electric energy exclusively for sale at wholesale; (iv) there are no lease arrangements with respect to the facility with any public utility company; (v) Applicant is not an affiliate or associate company of an electric utility company; (vi) no electric utility company which is affiliate or associate company of the Applicant will own or operate the Facility; and (vii) no rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced by the Facility, was in effect under the laws of any State on the date of enactment of the Energy Policy Act (October 24, 1992).

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. Copies of this filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21909 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1993:

Second Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 10

Twenty-Third Revised Sheet No. 11

Eighteenth Revised Sheet No. 13

First Revised Volume No. 1-A

Nineteenth Revised Sheet No. 201

Original Volume No. 2

Thirty-Third Revised Sheet No. 2.3

Northwest states that the purpose of this filing is first to update its Commodity SSP Surcharge effective October 1, 1993, to reflect (1) interest applicable to July, August and September 1993, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 3.97¢ per MMBtu for the three months commencing October 1, 1993. A further purpose of this filing is to update Northwest's tariff to reflect the Commission approved Annual Charge Adjustment factor to be effective for the twelve-month period beginning October 1, 1993.

Northwest states that a copy of this filing has been served upon all jurisdictional customers and state regulatory commissions in its market area.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21910 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-78-000]

Overthrust Pipeline Co.; Tariff Filing

September 2, 1993.

Take notice that on August 31, 1993, Overthrust Pipeline Company, (Overthrust) tendered for filing as part of its FERC Gas Tariff, Original Volume Nos. 1 and 1-A, Fourteenth Revised Sheet No. 6 and Third Revised Sheet No. 4, with a proposed effective date of October 1, 1993.

Overthrust states that this filing implements the annual charge unit rate of \$0.0026 per Mcf in each of its transportation rate schedules.

Overthrust states that copies of the filing were served upon Overthrust's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21911 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-86-000]

Pacific Gas Transmission Co.; Annual Charge Adjustment

September 2, 1993.

Take notice that on August 31, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 1-A certain tariff sheets, with proposed effective date of October 1, 1993.

PGT states that the above tariff sheets have been revised to reflect a

modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT.

PGT states that copies of the filing are being served upon all affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21912 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ94-1-7-000 and TM94-1-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of October 1, 1993:

One Hundred Thirty-Third Revised Sheet No. 4A

Forty-Sixth Revised Sheet No. 4B
Fifty-Second Revised Sheet No. 4J
Ninth Revised Sheet No. 45M

Southern states that the aforesaid tariff sheets reflect an increase of ¢30 per Mcf at 1,000 Btu in the commodity component of Southern's rates from its last scheduled PGA filing in Docket No. TQ93-1-4-000 as a result of projected changes in Southern's cost of purchased gas. The aforesaid tariff sheets also implement the Commission's revised annual charge adjustment of .25¢ per MMBtu of October 1, 1993.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure §§ 385.214, 385.211). All such petitions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21913 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-181-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1993, filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988) and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in § 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order on April 22, 1993, in Docket Nos. RS92-11-000, RS92-11-003, RS92-11-004, RP88-67-000, et al., (Phase I/Rates), and RP92-234-001 (April 22 Order).

Texas Eastern states that Order No. 636 and the April 22 Order permit Texas Eastern to file this limited Section 4 filing to begin recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR costs incurred since the date of its previous quarterly filing, plus carrying charges through August 31, 1993, totalling \$6,805,665. Additional interest of \$155,393 at the current FERC annual rate of 6.00% is added for carrying

charges from September 1, 1993 to the projected payment dates.

The proposed effective date of the filing is October 1, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-21914 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-180-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 31, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover Stranded Costs in accordance with the procedures set forth in Section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order on April 22, 1993, in Docket Nos. RS92-11-000, RS92-11-003, RS92-11-004, RP88-67-000, et al., (Phase I/Rates), and RP92-234-001 (April 22 Order).

Texas Eastern states that Order No. 636 and the April 22, 1993, Order permits Texas Eastern to file this limited Section 4 filing to begin recovery of its Stranded Costs.

Texas Eastern states that the filing includes known and measurable

Stranded Costs incurred from the date of implementation of Order No. 636 on Texas Eastern's system, June 1, 1993, through July 31, 1993, totalling \$2,428,347.12. Interest of \$30,098 at the current FERC annual rate of 6.00% is added for carrying charges from the date of incurrence of the costs to the projected date of payment by the customers.

The proposed effective date of the filing is **October 1, 1993**.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21915 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-179-000]

**Texas Eastern Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

September 2, 1993.

Take notice that on August 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of September 1, 1993:

First Revised Sheet No. 223.

Texas Eastern states that on August 5, 1993, in Docket No. RP93-164-000, Hope Gas, Inc. (Hope) filed a complaint alleging Texas Eastern (1) failed to comply with its effective filed gas tariff and for undue discrimination in violation of Section 4 of the NGA, 15 U.S.C. 717c, (2) denied Hope the choice of services contemplated by Order Nos. 636, 636-A and 636-B, and (3) failed to perform in conformity with its legally binding service agreement for provision of firm transportation service to Hope under Rate Schedule SCT (Complaint).

Texas Eastern states that subsequent to the filing of the complaint, Texas Eastern and Hope entered into settlement negotiations which were successful. Texas Eastern has agreed to file to revise section 1(a)

AVAILABILITY of Rate Schedule SCT as necessary in order to permit Hope to convert the 1,692 Dth/day of Rate Schedule FT-1 entitlements to Rate Schedule SCT and thereby provide Hope with Rate Schedule SCT service in the full amount of Hope's aggregate MDQ of 5,000 Dth/day. Hope has agreed, and is filing August 30, 1993 to withdraw its complaint. Approval by the Commission of this tariff revision to Rate Schedule SCT will resolve the complaint proceeding; however, the September 1, 1993 effective date is central to the resolution agreed upon by Hope and Texas Eastern.

Accordingly, section 1(a) AVAILABILITY of Rate Schedule SCT in Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1 has been revised to state that Rate Schedule SCT is also available to "former Customers who as of October 31, 1992 were (i) Customers under Rate Schedules CD-1, CD-2, DCQ and SGS or (ii) Customers under Rate Schedule FT-1 as a result of conversion from Rate Schedules CD-1, CD-2, DCQ and SGS".

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21916 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-7-18-000]

**Texas Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

September 2, 1993.

Take notice that on August 30, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the revised tariff sheets contained in Appendix A to the filing, with a proposed effective date of September 1, 1993.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to an out-of-cycle Transportation Cost Adjustment and are proposed to be effective September 1, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional sales customers, all parties on the Commission's official restricted service list in the consolidated proceedings, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21917 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-7-18-000]

**Texas Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

September 2, 1993.

Take notice that on August 30, 1993, Texas Gas Transmission Corporation (Texas Gas), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following revised tariff sheets, with a proposed effective date of September 1, 1993:

Seventh Revised Seventy-third Revised Sheet No. 10
Seventh Revised Seventy-second Revised Sheet No. 10A

Seventh Revised Fifty-fourth Revised Sheet No. 11
 Seventh Revised Forty-fourth Revised Sheet No. 11A
 Seventh Revised Forty-third Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective September 1, 1993. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of \$.3916 per MMBtu and a Demand-1 rate increase of \$.28 per MMBtu from the rates set forth in the Quarterly PGA filed July 1, 1993 (Docket No. TQ93-6-18).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21918 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-176-000]

U-T Offshore System; Proposed Interim Reduction in Rates

September 2, 1993.

Take notice that on August 30, 1993, U-T Offshore System (U-TOS) filed, pursuant to section 4 of the Natural Gas Act, for an interim reduction in its transportation rates to be effective as of July 1, 1993.

U-TOS is proposing an interim rate reduction in its maximum commodity rates (per Mcf transported) as follows:

	Cur- rently ef- fective	New In- terim
T/FT Commodity Rate ..	\$0.0151	0.0098

	Cur- rently ef- fective	New In- terim
IT Rate0223	.0170
T/I/FT/IT Overrun Rate .	.0223	.0170

U-TOS notes that the Demand Rate under Rate Schedule T and the Reservation Charge under Rate Schedule FT remain unchanged at \$0.2197 per month per Mcf of Contract Demand or Maximum Daily Quantity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such notions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21919 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4727-2]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on August 9, 1993, the Environment Protection Agency received an application from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121-2219, to determine if their Model 300 Gas Filter Correlation CO Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be

given in a subsequent issue of the Federal Register.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93-21984 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4726-6]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose Superfund confidential business information ("CBI") which has been submitted to EPA Region 2, Emergency and Remedial Response Division to the following contractors; Camp, Dresser & McKee Federal Programs Corp. ("CDM") of Fairfax, Virginia and TRC Environmental Corp. ("TRC") of Lowell, Massachusetts (collectively referred to hereinafter as "Contractors"); and to the following subcontractors: Booz, Allen & Hamilton ("Booz Allen") of Bethesda, Maryland; and Techlaw, Inc. ("Techlaw") of Chantilly, Virginia (collectively referred to hereinafter as "Subcontractors"). CDM's principal offices are located at 13135 Lee Jackson Memorial Highway, Suite 200, Fairfax, Virginia 22033. TRC's principal offices are located at Boot Mills South, Foot of John Street, Lowell, Massachusetts 01852. Booz Allen's principal offices are located at 4330 East-West Highway, Bethesda, Maryland 20814. Techlaw's principal offices are located at 14500 Avion Parkway, Suite 300, Chantilly, Virginia 22021-1101.

FOR FURTHER INFORMATION CONTACT:

Leslie Peterson, Program Support Branch, Emergency and Remedial Response Division, Environmental Protection Agency, Region 2, 26 Federal Plaza, New York, New York 10278. Telephone (212) 264-9251.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a

response action. CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, also require the maintenance of many other records, including those relevant to cost recovery. EPA, Region 2, has entered into Contract No. 68-W9-0002 with CDM and Contract No. 68-W9-0003 with TRC for management of these records. Pursuant to Contract No. 68-W9-0002, Booz Allen and Techlaw have entered into subcontracts with CDM under Work Assignment Nos. C02107 and C02010, respectively, pursuant to which Booz Allen and Techlaw provide information management support services to EPA, Region 2. Pursuant to Contract No. 68-W9-0003, Techlaw has entered into a subcontract with TRC under Work Assignment No. C02031, pursuant to which Techlaw provides support services in the compilation of administrative records. EPA, Region 2, has determined that disclosure of CBI to employees of the above Contractors and Subcontractors is necessary in order that the Contractors and Subcontractors may carry out the work required by the above contracts and subcontracts with EPA. The contracts and subcontracts comply with the requirements of 40 CFR 2.301(h)(ii). EPA, Region 2, requires that each employee of the Contractors and Subcontractors who will have access to CBI sign a written agreement that he or she (1) will use the information only for the purpose of carrying out the work required by the contract or subcontract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) is no longer required by the Contractors or Subcontractors for performance of the work required by the contracts or subcontracts, or upon completion of the contracts or subcontracts. These non-disclosure statements shall be maintained on file with the EPA, Region 2, Regional Project Officer.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 2, Attention: Leslie Peterson, 26 Federal Plaza, New York, New York 10278.

Dated: August 31, 1993.

George Pavlou,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 93-21988 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4727-1]

Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process.

DATES: The meeting will be held on September 27, 1993, from 9 a.m. until 5 p.m. and on September 28, 1993 from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Marilyn Null, Office of Federal Facilities Enforcement U.S. EPA (OE-2261), 401 M Street, SW., Washington, DC 20460, (202) 260-5686.

Dated: August 23, 1993.

Marilyn Null,

Designated Federal Official.

[FR Doc. 93-21985 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4726-8]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Elsinore Drum Removal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement under section 107 of CERCLA concerning the Elsinore Drum site located in Riverside County, California was entered into by EPA Region IX and Mr. Kin Adams ("the settling party"). The proposed settlement requires the settling party to pay \$25,000, which is EPA's response costs for the site, plus interest over a one year period to the Hazardous Substances Superfund in past response costs. The response costs incurred by EPA for this site do not exceed \$500,000. Therefore, EPA may settle this matter without the prior written approval of the Attorney General.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Moreno Valley Library, located at 25480 Alessandro Boulevard, Moreno, California; and at the U.S. Environmental Protection Agency, 75 Hawthorne Street, 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk, RC-1). **DATES:** Comments must be submitted on or before October 12, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC-1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should refer to the Elsinore Drum site located in Riverside County, California (EPA Docket No. 93-13).

FOR FURTHER INFORMATION CONTACT: David Silverman, Assistant Regional Counsel (RC-3-1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744-1377.

Dated: August 26, 1993.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 93-21986 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-51820; FRL-4631-2]

Certain Chemicals; Premanufacture Notices**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 121 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-814, July 4, 1993.
 P 93-815, July 21, 1993.
 P 93-816, 93-817, 93-818, 93-819, 93-820, July 5, 1993.
 P 93-821, 93-822, 93-823, 93-824, 93-825, 93-826, 93-827, 93-828, 93-829, 93-830, July 6, 1993.
 P 93-831, July 7, 1993.
 P 93-832, 93-833, July 10, 1993.
 P 93-834, 93-835, 93-836, 93-837, 93-838, July 11, 1993.
 P 93-839, July 5, 1993.
 P 93-840, July 10, 1993.
 P 93-841, 93-842, July 11, 1993.
 P 93-843, 93-844, 93-845, 93-846, 93-847, 93-848, 93-849, July 12, 1993.
 P 93-850, July 25, 1993.
 P 93-851, 93-852, July 12, 1993.
 P 93-853, 93-854, 93-855, 93-856, 93-857, 93-858, 93-859, July 14, 1993.
 P 93-860, 93-861, July 17, 1993.
 P 93-862, 93-863, 93-864, July 14, 1993.
 P 93-865, 93-866, 93-867, July 18, 1993.
 P 93-868, 93-869, 93-870, July 20, 1993.
 P 93-871, July 27, 1993.
 P 93-872, 93-873, 93-874, 93-875, 93-876, 93-877, 93-878, 93-879, 93-880, 93-881, 93-882, 93-883, July 20, 1993.
 P 93-884, July 21, 1993.
 P 93-885, 93-886, 93-887, 93-888, 93-889, July 20, 1993.
 P 93-890, 93-891, July 21, 1993.
 P 93-892, 93-893, 93-894, 93-895, July 24, 1993.
 P 93-896, July 31, 1993.
 P 93-897, 93-898, July 25, 1993.
 P 93-899, July 28, 1993.
 P 93-900, 93-901, 93-902, 93-903, 93-904, 93-905, 93-906, 93-907, 93-908, 93-909, 93-910, 93-911, 93-912, 93-913, 93-914, 93-915, 93-916, July 25, 1993.

P 93-917, July 5, 1993.
 P 93-918, 93-919, 93-920, 93-921, 93-922, 93-923, 93-924, 93-925, 93-926, 93-927, 93-928, 93-929, 93-930, 93-931, 93-932, 93-933, 93-934, July 25, 1993.

Written comments by:

P 93-814, June 4, 1993.
 P 93-815, June 21, 1993.
 P 93-816, 93-817, 93-818, 93-819, 93-820, June 5, 1993.
 P 93-821, 93-822, 93-823, 93-824, 93-825, 93-826, 93-827, 93-828, 93-829, 93-830, June 6, 1993.
 P 93-831, June 7, 1993.
 P 93-832, 93-833, June 10, 1993.
 P 93-834, 93-835, 93-836, 93-837, 93-838, June 11, 1993.
 P 93-839, June 5, 1993.
 P 93-840, June 10, 1993.
 P 93-841, 93-842, June 11, 1993.
 P 93-843, 93-844, 93-845, 93-846, 93-847, 93-848, 93-849, June 12, 1993.
 P 93-850, June 25, 1993.
 P 93-851, 93-852, June 12, 1993.
 P 93-853, 93-854, 93-855, 93-856, 93-857, 93-858, 93-859, June 14, 1993.
 P 93-860, 93-861, June 17, 1993.
 P 93-862, 93-863, 93-864, June 14, 1993.
 P 93-865, 93-866, 93-867, June 18, 1993.
 P 93-868, 93-869, 93-870, June 20, 1993.
 P 93-871, June 27, 1993.
 P 93-872, 93-873, 93-874, 93-875, 93-876, 93-877, 93-878, 93-879, 93-880, 93-881, 93-882, 93-883, June 20, 1993.
 P 93-884, June 21, 1993.
 P 93-885, 93-886, 93-887, 93-888, 93-889, June 20, 1993.
 P 93-890, 93-891, June 21, 1993.
 P 93-892, 93-893, 93-894, 93-895, June 24, 1993.
 P 93-896, July 1, 1993.
 P 93-897, 93-898, June 25, 1993.
 P 93-899, June 28, 1993.
 P 93-900, 93-901, 93-902, 93-903, 93-904, 93-905, 93-906, 93-907, 93-908, 93-909, 93-910, 93-911, 93-912, 93-913, 93-914, 93-915, 93-916, June 25, 1993.
 P 93-917, June 5, 1993.
 P 93-918, 93-919, 93-920, 93-921, 93-922, 93-923, 93-924, 93-925, 93-926, 93-927, 93-928, 93-929, 93-930, 93-931, 93-932, 93-933, 93-934, June 25, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51820]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099 ET, Washington, DC 20460 (202) 260-3532.

FOR FURTHER INFORMATION CONTACT:

Susan Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION:

The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG-102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93-814

Manufacturer. Texaco Chemical Company.

Chemical. (G) Mannich condensation product of formaldehyde.

Use/Production. (S) Lube oil additive for marine heavy duty crankcase engine oils. Prod. range: 170,000-500,000 kg/yr.

P 93-815

Manufacturer. Minnesota Mining & Manufacturing Company.

Chemical. (G) Fluorinated siloxanes salt.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-816

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-817

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-818

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-819

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-820

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 93-821

Manufacturer. Confidential.
Chemical. (G) Mono substituted phenylazo-di substituted phenylazo-di substituted naphthalene sulfonic acid, ammonium salt.
Use/Production. (G) Dye. Prod. range: Confidential.

P 93-822

Manufacturer. Confidential.
Chemical. (G) Mono substituted phenylazo-di substituted benzene diazonium salt.
Use/Production. (G) Dye intermediate. Prod. range: Confidential.

P 93-823

Importer. BASF Corporation.
Chemical. (G) Polyester hydrofuran diether, unsaturated.
Use/Import. (G) Crosslinking monomer. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat).

P 93-824

Importer. BASF Corporation.
Chemical. (G) Polytetra hydrofuran diether, unsaturated.
Use/Import. (G) Crosslinking monomer. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat).

P 93-825

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-826

Manufacturer. Confidential.
Chemical. (G) Acrylic polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-827

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-828

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-829

Manufacturer. Henkel Corporation.

Chemical. (G) Alkyd alkoxyate epoxide.
Use/Production. (S) Intermediate in formulation product for coatings applications. Prod. range: Confidential.

P 93-830

Manufacturer. Marubeni America Corporation.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Modifier. Prod. range: 12,000–30,000 kg/yr.

P 93-831

Importer. Hitachi Chemical Company America, Ltd.
Chemical. (G) Polypropylene glycol diacrylate.
Use/Import. (G) Photo resin for circuit boards. Import range: Confidential.

P 93-832

Manufacturer. Confidential.
Chemical. (G) Aromatic sulfonic acid, compound with amine.
Use/Production. (G) Latent catalyst for thermosetting coatings used on various substrates. Prod. range: Confidential.

P 93-833

Importer. ICI America Inc.
Chemical. (G) Substituted phenyl azo thiophene compound.
Use/Import. (S) Thermal transfer printing dye. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Eye irritation: Mild (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Positive. Skin sensitization: Positive (guinea pig).

P 93-834

Importer. Confidential.
Chemical. (S) Polyol ester.
Use/Import. (G) Lubricant. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit).

P 93-835

Manufacturer. The C. P. Hall Company.
Chemical. (G) Adipic acid polyester.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 93-836

Manufacturer. The C. P. Hall Company.
Chemical. (G) Glycerides mixed acids, mono-di- and tri.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 93-837

Manufacturer. Dover Chemical Corporation.
Chemical. (G) Ester of phosphorous.
Use/Production. (G) PVC stabilizer. Prod. range: Confidential.

P 93-838

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Alkyl substituted carbamate.
Use/Production. (S) Intermediate in the manufacture of a pesticide. Prod. range: Confidential.

P 93-839

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: Confidential.

P 93-840

Manufacturer. Fidelity Chemical Products Corporation.
Chemical. (S) Methanesulfonic acid, copper (2+) salt.
Use/Production. (S) Source of copper ions in metal finishing processes. Prod. range: Confidential.

P 93-841

Importer. Confidential.
Chemical. (G) Sulfated alkylphenolpolyethylene glycol ether, sodium salts.
Use/Import. (G) Metal plating additive. Import range: Confidential.

P 93-842

Manufacturer. BASF Corporation.
Chemical. (G) Methylimidazone substituted copper phthalocyanine.
Use/Production. (S) Dye intermediate. Prod. range: Confidential.
Toxicity Data. Acute static. > 2.20 mg/1 96h (blue gill).

P 93-843

Manufacturer. Pierce & Stevens Corporation.
Chemical. (G) Polyester polyurethane.
Use/Production. (S) Water-based coating. Prod. range: Confidential.

P 93-844

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 93-845

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93-846

Manufacturer. BASF Corporation.
Chemical. (G) Trialkylalkylene-heterocyclazolium derivative of copper phthalocyanine, mixed salt.
Use/Production. (S) Dyestuff for paper. Prod. range: Confidential.

P 93-847

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.
Use/Production. (G) Open,
nondispersive use. Prod. range:
Confidential.

P 93-848

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Open,
nondispersive use. Prod. range:
Confidential.

P 93-849

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate
prepolymer.
Use/Production. (S) Adhesive (for all
new chemical substances in PMN).
Prod. range: Confidential.

P 93-850

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate
prepolymer.
Use/Production. (G) Adhesive (for all
new chemical substances in PMN).
Prod. range: Confidential.

P 93-851

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate
prepolymer.
Use/Production. (S) Adhesive (for all
new chemical substances in PMN).
Prod. range: Confidential.

P 93-852

Manufacturer. Toyo Ink America
Incorporation.
Chemical. (G) Naphthanilide monoazo
pigment.
Use/Production. (S) Printing ink.
Prod. range: 5,000-10,000 kg/yr.

P 93-853

Manufacturer. The Dow Chemical
Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for
polyurethane reaction. Prod. range:
Confidential.

P 93-854

Manufacturer. The Dow Chemical
Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for
polyurethane reaction. Prod. range:
Confidential.

P 93-855

Manufacturer. The Dow Chemical
Company.
Chemical. (G) Organotin catalyst.
Use/Production. (G) Catalyst for
polyurethane reaction. Prod. range:
Confidential.

P 93-856

Manufacturer. The Dow Chemical
Company.

Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for
polyurethane reaction. Prod. range:
Confidential.

P 93-857

Manufacturer. The Dow Chemical
Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for
polyurethane reaction. Prod. range:
Confidential.

P 93-858

Manufacturer. The Dow Chemical
Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for
polyurethane reaction. Prod. range:
Confidential.

P 93-859

Manufacturer. Ciba-Geigy
Corporation.
Chemical. (G) Naphthalenedisulfonic
acid sulfamide disazo naphthol salt.
Use/Production. (G) Textile dye. Prod.
range: Confidential.
Toxicity Data. Acute oral: > 2,000 mg/
kg (rat). Acute dermal: > 2,000 mg/kg
(rat). Acute static: LC50 79 mg/l 96h
(zebra fish). Eye irritation: None
(rabbit). Skin irritation: None (rabbit).
Mutagenicity: Negative. Skin
sensitization: Positive (guinea pig).

P 93-860

Manufacturer. Confidential.
Chemical. (G) Substituted alkylamide.
Use/Production. (G) Open,
nondispersive use. Prod. range:
Confidential.

P 93-861

Manufacturer. Confidential.
Chemical. (G) Substituted alkylamide.
Use/Production. (G) Open,
nondispersive use. Prod. range:
Confidential.

P 93-862

Manufacturer. Amoco Chemical
Company.
Chemical. (G) Polyolefin-modified
polyphthalamide.
Use/Production. (S) Engineering
polymers for use in the manufacture of
articles. Prod. range: Confidential.

P 93-863

Manufacturer. Amoco Chemical
Company.
Chemical. (G) Polyolefin-modified
polyphthalamide.
Use/Production. (S) Engineering
polymers for use in the manufacture of
articles. Prod. range: Confidential.

P 93-864

Manufacturer. Amoco Chemical
Company.

Chemical. (G) Polyolefin-modified
polyphthalamine.
Use/Production. (S) Engineering
polymers for use in the manufacture of
articles. Prod. range: Confidential.

P 93-865

Manufacturer. PCR Inc.
Chemical. (G) Trimethylsilylated
amine.
Use/Production. (S) Chemical
intermediate. Prod. range: Confidential.

P 93-866

Manufacturer. PCR Inc.
Chemical. (G) Trimethylsilylated
amine.
Use/Production. (S) Chemical
intermediate. Prod. range: Confidential.

P 93-867

Importer. Wacker Silicones
Corporation.
Chemical. (S) Siloxanes and silicones,
di-Me, hydroxy terminated; siloxanes
and silicones, di-Me; cyclohexanamine,
N(3-dimethoxy methylsilyl) propyl.
Use/Import. (S) Textile softener
emulsion which is further formulated to
textile treatment for fabric. Import
range: Confidential.

P 93-868

Importer. BASF Corporation.
Chemical. (S) 2-Propenoic acid, 2-
methyl-, methyl ester, polymer with
ethenylbenzene and (1-methylethenyl)
benzene.
Use/Import. (S) Raw material of
expandable bead for lost foam casting.
Import range: Confidential.

P 93-869

Importer. Unichema North America.
Chemical. (G) Polyol ester of branched
and linear fatty acids.
Use/Import. (G) Dispersive use and
open, nondispersive use. Import range:
Confidential.
Toxicity Data. Acute oral: LD50 >
5,000 mg/kg (rat). Acute dermal: LD50 >
2,000 mg/kg (rats). Skin irritation: None
(rabbit).

P 93-870

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate
prepolymer.
Use/Production. (S) Intermediate in
the manufacture of the adhesive. Prod.
range: Confidential.

P 93-871

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate
prepolymer.
Use/Production. (S) Intermediate in
the manufacture of the adhesive. Prod.
range: Confidential.

P 93-872

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93-873

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93-874

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93-875

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93-876

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93-877

Manufacturer. H. B. Fuller, Company.
Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93-878

Manufacturer. Pi-Tech, Inc.
Chemical. (S) Zirconium IV tetrakis (mixed fatty C₇-C₃₀) alcoholato.

Use/Production. (S) Process aid for rigid PVC. Prod. range: Confidential.

P 93-879

Manufacturer. Pi-Tech, Inc.
Chemical. (S) Zirconium IV bis (mixed fatty C₁₇-C₃₀- alcoholato) cyclo diphosphato-O,O; adduct moles tris C₁₂-C₁₅ alkyl phosphite.

Use/Production. (S) Process aid for rigid PVC. Prod. range: Confidential.

P 93-880

Manufacturer. Champion Technologist, Inc.

Chemical. (G) 2-Hydroxy-1,2,3-propane tricarboxylic acid salt of N-alkyltrimethylene diamine.

Use/Production. (S) Oilfield water clarifier. Prod. range: 10,000-50,000 kg/yr.

P 93-881

Manufacturer. Champion Technologies, Inc.

Chemical. (G) 2-Hydroxy-1,2,3-propane tricarboxylic acid salt of N-alkyl tripropylenetetra amine.

Use/Production. (S) Oilfield water clarifier. Prod. range: 10,000-50,000 kg/yr.

P 93-882

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Dialkyl substituted carbonate.

Use/Production. (S) Intermediate in the manufacture of a pesticide. Prod. range: Confidential.

P 93-883

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Intermediate for electrical insulation coating. Prod. range: Confidential.

P 93-884

Importer. Degussa Corporation.

Chemical. (S) Silane,

hexadecyltrimethoxyl-.

Use/Import. (S) Surface modification such as fillers, glass, metal-oxide coupling agent in rubber, bituminous binder. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 5,002 mg/kg (rat). Acute static: LC50 1,000 mg/l 96hr (fresh-water fish). Eye irritation: None (rabbit). Skin irritation: Moderate (rabbit).

P 93-885

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (S) A component of the material for IC fabrication. Import range: Confidential.

P 93-886

Manufacturer. Confidential.

Chemical. (G) Substituted phenol.

Use/Production. (G) A component of the material for IC fabrication. Prod. range: Confidential.

P 93-887

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (S) A component of the material for IC fabrication. Import range: Confidential.

P 93-888

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 93-889

Importer. Charkit Chemical Corporation.

Chemical. (G) Iron, diamine naphthalene disulfonate complexes.

Use/Import. (S) Photographic film dye. Import range: 150-600 kg/yr.

P 93-890

Manufacturer. ChemDesign Corporation.

Chemical. (G) Disubstituted diphenol oxide.

Use/Production. (S) Organic synthesis intermediate. Prod. range: 11,000-20,000 kg/yr.

P 93-891

Manufacturer. Niemann Associates.

Chemical. (G) Alkyd acrylic copolymer.

Use/Production. (S) Used as a binder in ink formulations. Prod. range: Confidential.

P 93-892

Manufacturer. Confidential.

Chemical. (G) Transition metal halide complex.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 93-893

Manufacturer. Confidential.

Chemical. (S) Transition metal halide complex.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 93-894

Manufacturer. Eastman Kodak Company.

Chemical. (G) Disubstituted amino azo heterocyclic propanamide.

Use/Production. (G) Nondispersive use in an article. Prod. range: 1,000-5,000 kg/yr.

Toxicity Data. Acute oral: LD50 5,000 mg/kg (rat). Acute dermal: LD50 2 g/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Skin sensitization: Positive (guinea pig).

P 93-895

Importer. Confidential.

Chemical. (G) Beta-alanediacetic acid.

Use/Import. (G) Complexing agent. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,200 mg/kg (rat). Acute static: EC50 70.7 mg/l 48h (daphnia magna). Mutagenicity: Negative.

P 93-896

Manufacturer. Confidential.

Chemical. (G) Polymeric quaternary ammonium chloride.

Use/Production. (G) Aliphatic polyester (protective and decorative). Prod. range: Confidential.

P 93-897

Manufacturer. Confidential.

Chemical. (G) Aliphatic diol polyester.

Use/Production. (S) Resin for coatings protective decorative. Prod. range: Confidential.

P 93-898

Manufacturer. Confidential.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93-929

Manufacturer. Confidential.
Chemical. (G) Polyether functional acrylic polymer.
Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93-930

Manufacturer. Confidential.
Chemical. (G) Polyether functional acrylic polymer.
Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93-931

Manufacturer. Confidential.
Chemical. (G) Polyether functional acrylic polymer.
Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93-932

Manufacturer. Confidential.
Chemical. (G) Polyether functional acrylic polymer.
Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93-933

Manufacturer. Confidential.
Chemical. (G) Polyether functional acrylic polymer.
Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93-934

Manufacturer. Confidential.
Chemical. (G) Polyether functional acrylic polymer.
Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

Dated: August 31, 1993.

George A. Bonina,

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

[FR Doc. 93-21990 Filed 9-8-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59968; FRL-4631-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences.

Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). In the *Federal Register* of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 16 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y93-139, 93-140, 93-141, May 31, 1993.

Y 93-142, June 9, 1993.

Y 93-143, June 8, 1993.

Y 93-144, 93-145, 93-146, 93-147, 93-148, 93-149, 93-150, June 10, 1993.

Y 93-151, 93-152, 93-153, 93-154, June 14, 1993.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available from the OPPT Document Control Officer (TS-790), Rm. ETG-099, at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93-139

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester.
Use/Production. (S) General purpose laminating resin. Prod. range: Confidential.

Y 93-140

Manufacturer. Polacryl, Inc.
Chemical. (G) Neutralized acrylic polymer.
Use/Production. (G) Used to control the viscosities of water based slurries of calcium carbonate, clays, and mineral pigments. Prod. range: Confidential.

Y 93-141

Manufacturer. Arnette Limited, Inc.
Chemical. (G) Esterified polyol; carboxylated polyol.
Use/Production. (G) Surfactant for water based coatings. Prod. range: Confidential.

Y 93-142

Manufacturer. Reichhold Chemicals, Inc..
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Panel resin. Prod. range: Confidential.

Y 93-143

Importer. Elf Atochem North America.
Chemical. (S) Azacyclotridecan-z-one hexamethylene diamine; 1,9-nonanedoic acid.
Use/Import. (S) Hot melt adhesive. Import range: 25,000–50,000 kg/yr.

Y 93-144

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Import. (S)

Y 93-145

Manufacturer. Confidential.
Chemical. (G) Medium oil alkyd resin.
Use/Production. (S) Baking finishes for metals. Prod. range: Confidential.

Y 93-146

Manufacturer. Confidential.
Chemical. (G) Short oil alkyd.
Use/Production. (S) Baking finishes. Prod. range: Confidential.

Y 93-147

Manufacturer. Confidential.
Chemical. (G) Water-reducible alkyd resin.
Use/Production. (S) Water-thinned clear and pigmented coatings. Prod. range: Confidential.

Y 93-148

Manufacturer. Confidential.
Chemical. (G) Medium oil alkyd.
Use/Production. (S) Industrial baking finishes. Prod. range: Confidential.

Y 93-149

Manufacturer. Confidential.
Chemical. (G) Short oil soybean alkyd resin.
Use/Production. (S) Baking coatings for metal. Prod. range: Confidential.

Y 93-150

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd.
Use/Production. (S) Water-thinned clear and pigmented coatings. Prod. range: Confidential.

Y 93-151

Manufacturer. Confidential.
Chemical. (G) Solvent free, modified polysiloxane.
Use/Production. (G) Defoamer in coating agents for contained uses. Prod. range: Confidential.

Y 93-152

Manufacturer. Franklin International.

Chemical. (G) Acrylate-vinyl acetate copolymer dispersion.

Use/Production. (S) Permanent pressure sensitive adhesive. Prod. range: 74,000–98,000 kg/yr.

Y 93–153

Manufacturer. MSP Technology.

Chemical. (G) Condensate of fatty and hydroxylated fatty acids with epoxidized oil.

Use/Production. (S) Coatings, vehicle formulation chemical intermediate. Prod. range: Confidential.

Y 93–154

Manufacturer. MSP Technology.

Chemical. (G) Fatty acid-hydroxy acid condensate.

Dated: August 31, 1993.

George A. Bonina,

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

[FR Doc. 93–21991 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4726–9]

Proposed Assessment of Clean Water Act Class II Administrative Penalty to Hallmark Circuits, Inc., and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment

on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Hallmark Circuits, Inc., located at 5330 Eastgate Mall Road, San Diego, California; EPA Docket No. CWA–IX–FY93–44; filed on August 24, 1993, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of \$110,000 for failure to comply with the categorical pretreatment standards and requirements for new source metal finishers (40 CFR part 433).

FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: August 24, 1993.

William H. Pierce,

Acting Director, Water Management Division.

[FR Doc. 93–21987 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1963]

Application for Review of Action in Rulemaking Proceeding

September 2, 1993.

Application For Review has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to

this petition must be filed September 24, 1993. See 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of 73.202(b) of the Commission's Rules, Table of Allotments FM Broadcast Stations (Prineville and Sisters, Oregon) (MM Docket No. 92–3, RM No. 7874 and 7958).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21868 Filed 9–8–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 6-7, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 6-7, 1993.¹ The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economic expansion has picked up somewhat in recent months from the very slow pace of the first quarter. Total nonfarm payroll employment changed little in June after registering substantial gains in April and May, and the civilian unemployment rate edged up to 7.0 percent in June. Industrial production has changed little on balance over the last few months. Real consumer expenditures edged higher in May after a sizable rise in April but have increased only slightly thus far this year. Housing starts turned up in April from a depressed first-quarter pace and rose somewhat further in May. Incoming data suggest a continued brisk advance in outlays for business equipment, while nonresidential construction has remained soft. The nominal U.S. merchandise trade deficit was about unchanged in April but substantially larger than its average rate in the first quarter. Consumer and producer prices were about unchanged in May, but for the year to date inflation has been more rapid than in the second half of 1992.

Short-term interest rates have changed little since the Committee meeting on May 18 while bond yields have declined somewhat. In foreign exchange markets, the trade-

¹ Copies of the Minutes of the Federal Open Market Committee Meeting of July 6-7, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

weighted value of the dollar in terms of the other G-10 currencies increased on balance over the intermeeting period.

After contracting during the first quarter, M2 and M3 expanded appreciably over the second quarter. For the year through June, growth of the two aggregates was below the lower ends of the ranges established by the Committee for 1993. Total domestic nonfinancial debt expanded somewhat further through April.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in the broader monetary aggregates over the third quarter.

By order of the Federal Open Market Committee, September 2, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93-22030 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

Warren E. and Gladys R. Bathke; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §

225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Warren E. and Gladys R. Bathke*, Omaha, Nebraska; to acquire 25 percent of the voting shares of Stapleton Investment Co., Stapleton, Nebraska, and thereby indirectly acquire Bank of Stapleton, Stapleton, Nebraska.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22032 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

Bergen North Financial, M.H.C., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 1, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bergen North Financial, M.H.C.*, Westwood, New Jersey; to become a bank holding company by acquiring between 57.9 and 63.2 percent of the voting shares of Westwood Savings Bank, Westwood, New Jersey.

2. *GP Financial Corp.*, Flushing, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Green Point Savings Bank, Brooklyn, New York.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to merge with Inter Community Bancorp, Springfield, New Jersey, and thereby indirectly acquire Inter Community Bank, Springfield, New Jersey.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F&A Financial Company*, Kittanning, Pennsylvania; and Snyder Holding Corporation, Kittanning, Pennsylvania; to acquire an additional 3.5 percent of the voting shares of The Farmers National Bank of Kittanning, Kittanning, Pennsylvania, for a total of 45.5 percent.

D. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Peoples BancTrust Company, Inc.*, Selma, Alabama; to acquire 65.8 percent of the voting shares of CeeBee Corporation, Prattville, Alabama, and thereby indirectly acquire The Citizens Bank of Prattville, Prattville, Alabama.

2. *SBT Bancshares, Inc.*, Golden Meadow, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank & Trust Company of Golden Meadow, Golden Meadow, Louisiana.

E. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Southeast Banking Limited Partnership*, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of First Southeast Banking Corporation, Lake Geneva, Wisconsin, and thereby indirectly acquire First Bank Southeast of Lake Geneva, N.A..

Lake Geneva, Wisconsin, and First Bank Southeast, N.A., Milwaukee, Wisconsin.

2. *Heritage Bancshares Group, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Geiger Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Heritage Bank, N.A., Holstein, Iowa; and Heritage Bancshares Corporation, Willmar, Minnesota, and thereby indirectly acquire Heritage Bank, N.A., Willmar, Minnesota.

F. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Market Street Bancshares, Inc.*, McLeansboro, Illinois; to acquire at least 51 percent of the voting shares of Wayne County Bank and Trust Company, Fairfield, Illinois.

G. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *State Bank of Hawley Employee Stock Ownership Plan & Trust*, Hawley, Minnesota; to become a bank holding company by acquiring an additional 13.44 percent of the voting shares of Bankshares of Hawley, Inc., Hawley, Minnesota, for a total of 30.02 percent, and thereby indirectly acquire State Bank of Hawley, Hawley, Minnesota.

H. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Centennial Bank Holdings, Inc.*, Eaton, Colorado; to acquire 100 percent of the voting shares of Farmers Industrial Bank, Eaton, Colorado.

I. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Farmersville Bancshares, Inc.*, Farmersville, Texas; to acquire 100 percent of the voting shares of First McKinney Bancshares, Inc., McKinney, Texas, and thereby indirectly acquire First Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22033 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

First Commerce Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to acquire 100 percent of the voting shares of First Acadiana National Bancshares, Inc., Opelousas, Louisiana, and thereby indirectly acquire First Acadiana National Bank, Opelousas, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; to merge with Lincolnland Bancorp, Inc., Dale, Indiana, and thereby indirectly acquire Lincolnland Bank, Dale, Indiana.

2. *National City Bancshares, Inc.*, Evansville, Indiana; to merge with Sure Financial Corporation, Washington, Indiana, and thereby indirectly acquire The Bank of Mitchell, Mitchell, Indiana; The Spurgeon State Bank, Spurgeon, Indiana; State Bank of Washington, Washington, Indiana; and The Pike County Bank, Petersburg, Indiana.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *UB, Inc.*, Unadilla, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank, Unadilla, Nebraska.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22034 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Green Point Savings Bank Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 28, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Green Point Savings Bank Employee Stock Ownership Trust*, Flushing, New York, to acquire 15 percent, and The Green Point Savings Bank Incentive Savings Trust, Flushing, New York, to acquire 1.7 percent of the voting shares of GP Financial Corp., Flushing, New York, and thereby indirectly acquire The Green Point Savings Bank, Brooklyn, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *V.G. Schaffer, Children's Trust*; *V.G. Schaffer, Grandchildren's Trust*; and *Jack Bryan Schaffer*, as trustee, St. Paul, Minnesota; to acquire an additional 57.6 percent of the voting shares of Balaton Agency, Inc., Balaton, Minnesota, and thereby indirectly acquire 21st Century Bank, Balaton, Minnesota.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22035 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

**NationsBank Corporation, et al.;
Acquisitions of Companies Engaged in
Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 1, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NationsBank Corporation*, Charlotte, North Carolina; to acquire US WEST Financial Services, Inc., Stamford, Connecticut, and thereby engage in corporate financing, commercial real estate financing, special industries financing (financing secured by various types of industrial and transportation equipment), mortgage investments, consumer financing, project financing, loan and lease

portfolio management, leasing personal or real property, and acting as principal, agent, or broker for credit insurance pursuant to §§ 225.25(b)(1), (b)(5), (b)(8)(i), and (b)(8)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire First Federal Savings Bank of Proviso Township, Hillside, Illinois (Thrift), and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. In connection with this application, Applicant also proposes to engage through Thrift's subsidiary, Westward Insurance Agency, Inc., Hillside, Illinois, in the sale of credit-related life and health insurance in connection with loans made by Thrift pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lena Spitzer Limited Partnership*, Streeter, North Dakota; and Streeter Insurance Agency, Inc., Streeter, North Dakota; to acquire Helmuth Spitzer Insurance, Streeter, North Dakota, and thereby engage in general insurance agency activities in Streeter, North Dakota, a town with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22036 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

**PNC Bank Corp., et al.; Notice of
Applications to Engage de novo in
Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Bank Corp.*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNC Securities Corp., Pittsburgh, Pennsylvania, in acting as investment or financial advisor to the extent of providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies; and providing financial and transaction advice regarding the structuring and arranging of swaps, caps and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions pursuant to § 225.25(b)(4)(vi) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Security Capital Corporation*, Batesville, Mississippi; to engage *de novo* in making loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

These activities will be conducted in the State of Mississippi.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22037 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Toronto-Dominion Bank; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity. 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 September 28, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Toronto-Dominion Bank, Toronto, Canada; to engage *de novo* through its subsidiary, Toronto-Dominion Capital Markets USA, Inc., in acting as intermediary, principal, broker

and advisor in respect of interest rate and currency swaps and derivative products based on interest rates and currencies. These activities were previously approved by Board Order. (*The Long-Term Credit Bank of Japan, Ltd.*, 79 Federal Reserve Bulletin 345 (1993))

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22038 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 931 0111]

Columbia Hospital Corp., 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 the respondent corporations to divest Kissimmee Memorial Hospital. In addition, it would prohibit, among other things, the respondent corporations from acquiring any acute care hospital in Osceola County, Florida for 10 years without prior Commission approval. The prior approval requirement also would have to be met before respondents permitted any acute care hospital they operate in the county to be acquired by any entity that already operates a hospital there.

DATES: Comments must be received on or before November 8, 1993.

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: Mark Horoschak, FTC/S-3115, Washington, DC 20580, (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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

In the Matter of: Columbia Hospital Corporation, a corporation, and Galen Health Care, Inc., a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of Galen Health Care, Inc. ("Galen") by Columbia Hospital Corporation ("Columbia"), and it now appearing that Columbia and Galen, as well as Columbia Healthcare Corporation (a corporation into which Columbia is proposed to be merged immediately preceding its acquisition of Galen) ("Columbia Healthcare"), hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to divest certain assets and cease and desist from certain acts:

It is hereby agreed, By and between Columbia, Columbia Healthcare and Galen, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Columbia Hospital Corporation is a corporation organized, existing and doing business under the laws of the State of Nevada, with its principal place of business at 777 Main Street, suite 2100, Fort Worth, Texas 76102. Proposed respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under the laws of the State of Delaware, with the same principal place of business as Columbia Hospital Corporation.

2. Proposed respondent Galen Health Care, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202.

3. Proposed respondents admit all the jurisdiction 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 claim 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 proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

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 § 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 divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to divest and 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 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 this 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. They understand that once the order has been issued, they may be required to file one or more compliance reports showing that 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

For the purposes of this Order:

A. "Columbia" means Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of Nevada, with its principal place of business at 777 Main Street, suite 2100, Fort Worth, Texas 76102, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns (including specifically, but not limited to, Columbia Healthcare Corporation, the corporation into which Columbia Hospital Corporation is proposed to be merged), and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

B. "Galen" means Galen Health Care, Inc., a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of Galen's divisions, subsidiaries, affiliates, successors and assigns.

C. "Respondents" means Columbia and Galen, collectively and individually.

D. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. To "acquire an acute care hospital" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

F. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. "Affiliate" means any entity whose management and policies are controlled in any way, directly, or indirectly, by the person with which it is affiliated.

H. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "Kissimmee Memorial Hospital" means the general acute care hospital currently owned and operated by Columbia in Osceola County, Florida at 200 Hilda Street, Kissimmee, Florida 34741, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, and other property of whatever description, except for accounts receivable and cash.

J. "Commission" means the Federal Trade Commission.

II

It is ordered that: A. Within six (6) months after the date this Order becomes final, respondents shall divest, absolutely and in good faith, Kissimmee Memorial Hospital. Kissimmee Memorial Hospital shall be divested only (1) to Adventist Health System/Sunbelt Health Care Corporation and/or its affiliates, pursuant to the acquisition agreement, or otherwise (2) to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestiture required by this Order is to ensure the continuation of Kissimmee Memorial Hospital as an ongoing, viable acute care hospital and to remedy the lessening of competition alleged in the Commission's complaint.

B. Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondents have divested Kissimmee Memorial Hospital or until such other time provided in the Agreement to Hold Separate.

C. Pending divestiture, respondents shall take such action as is necessary to maintain the viability and marketability of Kissimmee Memorial Hospital and shall not cause or permit the destruction, removal or impairment of any assets or businesses of Kissimmee Memorial Hospital, except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that: A. If respondents have not divested Kissimmee Memorial Hospital as required by Paragraph II of this Order within six (6) months after the date this Order becomes final, respondents shall consent to the appointment of a trustee by the Commission to divest Kissimmee Memorial Hospital. In the event the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall similarly 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, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the 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, respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of acute care hospitals.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest Kissimmee Memorial Hospital.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; provided, however, that the Commission or Court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to Kissimmee Memorial Hospital, or any other relevant information, as the trustee may reasonably request.

Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission or the Court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of Kissimmee Memorial Hospital. The divestiture shall be made in the manner set out in Paragraph II of this Order; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, 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 respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or 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 sale 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 respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting Kissimmee Memorial Hospital.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the Court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

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 accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain Kissimmee Memorial Hospital.

12. The trustee shall report in writing to respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It is further ordered, That for a period of ten (10) years from the date this Order becomes final, no respondent shall, without the prior approval of the Federal Trade Commission:

A. Acquire any acute care hospital in Osceola County, Florida; or

B. Permit any acute care hospital it operates in Osceola County, Florida to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in Osceola County, Florida.

Provided, however, that no acquisition shall be subject to this Paragraph IV of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000).

V

It is further ordered that, For a period of ten (10) years from the date this Order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Osceola County, Florida to be acquired by any other person (except pursuant to the divestiture required by Paragraph II of this Order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondents shall require as a condition precedent to the acquisition.

VI

It is further ordered that, For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents made at their principal offices, 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 all other records and documents in respondents' possession or control relating to any matter contained in this Order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview their officers or employees, who may have counsel present, regarding such matters.

VII

It is further ordered that: A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligations of this Order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

B. Annually beginning on the first anniversary of the date this Order becomes final and continuing for nine (9) years thereafter, respondents shall submit a verified report demonstrating the manner in which they have complied and are complying with this Order.

VIII

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of

subsidiaries or affiliates, which may affect compliance obligations arising out of this Order.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of the State of Nevada, and Columbia Healthcare Corporation, a corporation organized, existing and doing business under the laws of the State of Delaware, both with their principal place of business at 777 Main Street, suite 2100, Fort Worth, Texas 76102 (collectively referred to as "Columbia"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on or about June 10, 1993, Columbia entered into an agreement to acquire all of the voting stock of Galen Health Care, Inc. (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), which would require divestiture of Columbia's Kissimmee Memorial Hospital in Osceola County, Florida ("KMH"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of KMH's assets and businesses during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of KMH as described in Paragraph II of the Consent Order, and the Commission's right to seek to restore KMH as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve KMH as a viable independent acute care hospital pending its divestiture, and
(ii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, Columbia's entering into this Agreement shall in no way be construed as an admission by Columbia that the Acquisition is illegal; and

Whereas, Columbia understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Columbia with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of KMH as held separate pursuant to this Agreement, as follows:

1. Columbia agrees to execute and be bound by the attached Consent Order.

2. Columbia agrees that from the date of this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a-2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's rules;

b. 120 days after publication in the Federal Register of the Consent Order, unless by the date the Commission has finally accepted such Order; or

c. The day after the divestitures required by the Consent Order have been completed.

3. Columbia will hold KMH's assets and businesses as they are presently constituted separate and apart on the following terms and conditions:

a. KMH, as it is presently constituted, shall be held separate and apart and shall be operated independently of Columbia (meaning here and hereinafter, Columbia excluding KMH) except to the extent that Columbia must exercise direction and control over KMH to assure compliance with this Agreement.

b. Columbia shall not exercise direction or control over, or influence directly or indirectly, KMH or any of its operations or businesses; provided, however, that Columbia may exercise only such direction and control over KMH as is necessary to assure compliance with this Agreement.

c. Columbia shall maintain the viability and marketability of KMH and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single Columbia director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3.h), Columbia shall not permit any director, officer, employee, or agent of Columbia to also be a director, officer or employee of KMH.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, Columbia shall not receive or have access to, or use or continue to use, any of KMH's "material confidential information" not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Columbia from sources other than KMH, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

f. Columbia shall not change the composition of the management of KMH except that the KMH directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.h) shall have the power to remove employees for cause.

g. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a-3.f hereof, shall be subject to a majority vote of the New Board of Management Committee (as defined in subparagraph 3.h).

h. Columbia shall either separately incorporate KMH and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or shall establish separate business venture with articles of agreement covering the conduct of KMH in accordance with this Agreement. Columbia shall also elect a new three person board of directors of

KMH ("New Board") or Management Committee of KMH ("Management Committee"). Columbia may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall include no more than one Columbia director, officer, employee, or agent. Except as permitted by this Agreement, the director of the New Board or member of the Management Committee who is also a Columbia director, officer, employee or agent, shall not receive in his or her capacity as a New Board director or Management Committee member material confidential information and shall not disclose any such information received under this Agreement to Columbia or use it to obtain any advantage for Columbia. Said director of the New Board or member of the Management Committee who is also a Columbia director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of material confidential information (as that term is defined in subparagraph 3.e.). Such New Board director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding \$1,000,000 and carrying out Columbia's responsibility to assure that KMH is maintained in such manner as will permit its divestiture as an ongoing, viable acute care hospital. Except as permitted by this Agreement, such New Board director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if Columbia and KMH were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of KMH shall be retained separately in KMH. If necessary, Columbia shall provide KMH with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for KMH which have already been approved by Columbia.

j. Should the Federal Trade Commission seek in any proceeding to compel Columbia (meaning here and hereinafter Columbia including KMH) to

divest itself of KMH, or to seek any other injunctive or equitable relief, Columbia shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Columbia also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Columbia made to its principal office, Columbia shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Columbia 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 Columbia relating to compliance with this Agreement;

b. Upon five (5) days notice to Columbia, and without restraint or interference from it, to interview officers or employees of Columbia, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Columbia Hospital Corporation ("Columbia"), Galen Health Care, Inc. ("Galen"), and Columbia Healthcare Corporation, the proposed successor corporation to Columbia and Galen. The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of 100 percent of the voting stock of Galen would have violated section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act if it had been carried out.

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 issue and serve the agreement's proposed order.

Both Columbia and Galen (the "respondents") own and operate acute care hospitals in various states,

including acute care hospitals in Kissimmee, Florida, 17 miles south of Orlando in Osceola County. The complaint accompanying the proposed consent order concerns the proposed acquisition's impact upon competition for acute care hospital services in Kissimmee and elsewhere in Osceola County. According to the complaint, Columbia owns and operates Kissimmee Memorial Hospital in Kissimmee, and Galen owns and operates Osceola Regional Hospital, also in Kissimmee.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the Osceola County hospital market. The complaint alleges that Columbia and Galen are competitors in the market for acute care hospital services in Osceola County. That market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have an anticompetitive effect in the Osceola County hospital market, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of Kissimmee Memorial Hospital in Kissimmee. The purpose of the divestiture is to ensure the continuation of Kissimmee Memorial Hospital as an ongoing, viable acute care hospital independent of Osceola Regional Hospital, and to remedy the lessening of competition in the Osceola County hospital market resulting from the acquisition.

The proposed order allows the respondents to divest Kissimmee Memorial Hospital to either Adventist Health System/Sunbelt Health Care Corp., according to a Commission-approved acquisition agreement, or another acquirer with the prior approval of the Commission. On August 17, 1993, Columbia divested Kissimmee Memorial Hospital to Adventist Health System/Sunbelt Health Care Corp. pursuant to the Commission-approved acquisition agreement.

Under the terms of the order, the required divestiture would be completed within six months of the date the order becomes final. If the required divestiture were not completed within the six-month period, the respondents would consent to the appointment of a trustee, who would have eighteen additional months to divest Kissimmee

Memorial Hospital. The hold separate agreement executed as part of the consent order requires the respondents, until the completion of the divestiture or as otherwise specified, to hold separate and preserve all of the assets and businesses of Kissimmee Memorial Hospital.

The order would prohibit the respondents from acquiring any acute care hospital in Osceola County without the prior approval of the Federal Trade Commission. It would also prohibit the respondents from transferring, without prior Commission approval, any acute care hospital they operate in Osceola County to another person operating (or in the process of acquiring) an acute care hospital in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the acute care hospital operations of the respondents with those of any other acute care hospital in Osceola County, unless the respondents convinced the Commission that a particular transaction would not endanger competition in the Osceola County hospital market. The provisions would not apply to acquisitions where the value of the acquired assets is \$1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit the respondents from transferring all or any substantial part of any Osceola County hospital to a non-respondent without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by the respondents that their proposed acquisition would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,
Secretary.

[FR Doc. 93-21994 Filed 9-8-93; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9231]

Revlon, 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, a New York-based corporation and its subsidiary to have scientific evidence to support any future claims regarding the effectiveness of cellulite treatments or sunscreen products. Respondents would also be required to disclose the sun protection factor value in any sunscreen advertisement in which it proclaims the ability of the product to protect against the sun's rays.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA 02222. (617) 565-7240 or Brinley Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH 44114. (216) 522-4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), 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

In the Matter of Revlon, Inc., and Charles Revson, Inc., corporations.

The agreement herein, by and between Revlon, Inc. and Charles Revson, Inc., corporations, hereinafter

referred to as respondents, by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission ("Commission"), is entered into in accordance with the Commission's rules governing Consent Order procedures. In accordance therewith the parties hereby agree:

1. Respondent Revlon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 767 Fifth Avenue, New York, New York 10153.

Respondent Charles Revson, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 767 Fifth Avenue, New York, New York 10153.

2. Respondents have been served with a copy of a complaint issued on September 7, 1989, by the Federal Trade Commission in Docket No. 9231 charging Respondents with violations of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

Respondents have filed an answer to that complaint denying the charges. Respondents have also been the subject of a separate investigation conducted by the Cleveland Regional Office of the Federal Trade Commission in File No. 882-3110. The consent order contained herein is intended to resolve both the matters contained in the complaint issued on September 7, 1989, and the matters involved in the separate investigation in File No. 882-3110.

3. Respondents admit all the jurisdictional facts set forth in the proposed amended complaint attached hereto.

4. 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 challenge or contest the validity of the Order entered pursuant to this agreement; and
- d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by this Commission. If this agreement is accepted by the Commission, it 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 the agreement and so notify respondents, in which event it

will take such action as it may consider appropriate, or issue and serve its amended complaint (in such form as the circumstances may require) and decisions, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the proposed amendment complaint here attached.

7. This agreement contemplates that, if accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25 of the Commission's rules, the Commission may, without further notice to respondents, (1) issue its amended complaint corresponding in form and substance with the proposed amended complaint attached hereto 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 amended complaint and decision containing the agreed-to-order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The amended 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. Respondents have read the proposed amended complaint and order contemplated hereby. Respondents understand that once the order has been issued, respondents will be required to file one or more compliance reports showing that they have fully complied with the order. 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

Definitions

For purposes of this order:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, consumer surveys,

samples or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "Sunscreen product" shall mean any chemical product which, pursuant to applicable federal standards, is entitled to display a Sun Protection Factor (SPF) of 2 or greater, and which is advertised or promoted to be used for prevention of skin damage caused by the sun's harmful rays including, but not limited to, sunburn, premature skin aging and skin cancer.

I

It is ordered that, Revlon, Inc., and Charles Revson, Inc., corporations (collectively referred to as "respondents"), their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of Anti-cellulite body complex or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication,

A. Regarding the product's ability to reduce or eliminate cellulite;

B. Regarding the product's ability to reduce bumpy texture, ripples, or slackness of the skin caused by cellulite;

C. Regarding the product's ability to disperse toxins or excess water from areas where cellulite appears; or

D. Regarding the product's ability to reduce or eliminate cellulite by increasing sub-skin tissue strength or tone, unless at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II

It is further ordered, That Revlon, Inc., and Charles Revson, Inc., corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of PhotoAging Shield or any other sunscreen product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and

desist from making any representation, directly or by implication, regarding the efficacy, other than identifying the SPF value, of such product in providing protection against all or a specific amount of the sun's harmful rays, unless:

A. At the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation, *Provided that*, with respect to any representation covered by this part, any tentative final or final standard promulgated by the Food and Drug Administration (FDA) which establishes that such representation is supported by scientific evidence acceptable to the FDA, shall (as long as it remains in effect), also constitute adequate substantiation for such representation; and

B. Respondents disclose, clearly and prominently, the SPF value of the product.

III

It is further ordered that, For a period of three (3) years from the date that any representation covered by this Order is last disseminated, respondents shall maintain and upon request make available to the Commission for inspection and copying,

A. All materials that were relied upon to substantiate such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in respondents' possession or control, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

IV

It is further ordered that, Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other changes in the corporations which may affect compliance obligations arising out of this Order.

V

It is further ordered, That respondents shall distribute a copy of this Order to each of its current operating divisions, to each officer and other person responsible for the preparation or review of advertising or promotional material covered by this Order, and to all of respondent Charles Revson, Inc.'s Beauty Advisors.

VI

It is further ordered, That respondents shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Amended Complaint

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority invested in it by said Act, the Federal Trade Commission, having reason to believe that Revlon, Inc., and Charles Revson, Inc., corporations (collectively referred to as "respondents"), have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

Paragraph One: Revlon, Inc., is a Delaware corporation, and Charles Revson, Inc., is a New York corporation, each having its office or principal place of business located at 767 Fifth Avenue, New York, NY 10153. Charles Revson, Inc., is a wholly-owned subsidiary of Revlon, Inc.

Paragraph Two: Respondents have advertised, offered for sale, sold and distributed (1) Ultima II ProCollagen Anti-cellulite body complex ("Anti-cellulite body complex"); and (2) PhotoAging Shield.

Paragraph Three: Anti-cellulite body complex and PhotoAging Shield are "drugs" or "cosmetics" within the meaning of section 12 of the Federal Trade Commission Act, 15 U.S.C. section 52.

Paragraph Four: The acts and practices alleged in this complaint constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Paragraph Five: Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Anti-cellulite body complex and PhotoAging Shield. These advertisements and promotional materials contain the following statements:

a. "Now, thanks to Ultima II Research, no woman has to resign herself to unattractive ripples, bumpy texture, and slackness caused by cellulite."

b. "Massaging Anti-cellulite body complex into the skin attacks your cellulite problems two ways: First, it increases skin circulation to help disperse toxins and excess water that contribute to cellulite pockets, and

second, it builds subskin tissue strength and tone for smoother support."

c. "You'll see results after just seven to ten days of daily use."

d. "While you can't prevent biological aging, you can prevent Photoaging. That's because now Ultima II Research Laboratories have developed a product designed to prevent Photoaging. This revolutionary product acts as a shield for your skin."

e. "It's called PhotoAging Shield and it's so protective it actually intercepts damaging light waves before they penetrate your skin."

Paragraph six: Through the use of the statements referred to in paragraph five, respondents have represented, directly or by implication, that:

a. Anti-cellulite body complex significantly reduces cellulite;

b. Anti-cellulite body complex reduces skin's bumpy texture, ripples or slackness caused by cellulite;

c. Anti-cellulite body complex helps disperse toxins and excess water from areas where cellulite appears;

d. Anti-cellulite body complex increases sub-skin tissue strength and tone;

e. PhotoAging Shield blocks all of the harmful rays which cause photoaging.

Paragraph Seven: Through the use of the statements referred to in Paragraph Five, respondents have represented, directly or by implication, that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Six at the time such representations were made.

Paragraph Eight: In truth and in fact, respondents did not possess and rely upon a reasonable basis for the representations set forth in Paragraph Six at the time such representations were made. Therefore, the representation set forth in Paragraph Seven was, and is, false and misleading.

Paragraph Nine: Respondents' dissemination of the false and misleading representations as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said false and misleading representations, constitute unfair or deceptive acts or practices in or affecting commerce, and false advertisements, in violation of section 5(a) and 12 of the Federal Trade Commission Act.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Revlon, Inc., and its wholly-owned subsidiary, Charles Revson, Inc,

("Respondents"). The Respondents are major manufacturers and marketers of cosmetic and beauty care products.

The proposed consent order has been placed on the public record for sixty (60) days for receipt 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.

This matter concerns advertising claims made in connection with sale of two of Respondent's products, Anti-cellulite body complex and PhotoAging Shield.

The Commission's amended complaint in this matter charges Respondents with making unsubstantiated claims in various advertisements and promotional materials regarding the performance capabilities of Anti-cellulite body complex and PhotoAging Shield. With regard to Anti-cellulite body complex, the complaint alleges that Respondents have represented, directly or by implication, that the product significantly reduces cellulite; reduces skin's bumpy texture, ripples or slackness caused by cellulite; helps disperse toxins and excess water from areas where cellulite appears; and increase sub-skin tissue strength and tone. Respondents also represented, directly or by implication, that PhotoAging Shield blocks all of the harmful rays which cause photoaging. The complaint charges that Respondents failed to possess and rely upon a reasonable basis for these representations.

The consent order contains provisions designed to remedy the alleged violations. Part I of the order requires respondents to cease from making any representations regarding the ability of any cosmetic product to reduce or eliminate cellulite, reduce bumpy texture, ripples or slackness caused by cellulite, disperse toxins or excess water from areas where cellulite appears, or reduce or eliminate cellulite by increasing sub-skin tissue strength or tone, unless they possess and rely upon competent and reliable scientific evidence for such representations.

Part II of the Order requires Respondents to possess competent and reliable scientific evidence for any representation that PhotoAging Shield or any other sunscreen product provides complete protection or a specified amount of protection against the sun's

harmful rays. The order also requires Respondents to disclose SPF ratings in advertisements for sunscreen products that make such representations.

The order states that for any test, analysis, research, study, consumer survey, sample or other evidence to be "competent and reliable," the test, analysis, research, study consumer survey, sample or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results. The order also states that for a sunscreen product, any representation that the Food & Drug Administration establishes as supported by scientific evidence in a tentative final or final standard, will be considered to be adequately substantiated.

Parts III, IV, V and VI of the order are standard order provisions requiring respondents to retain all records that would bear on respondents' compliance with the order; to notify the Commission of any changes in the structure of the corporation that may effect its compliance; to distribute copies of the order to its operating divisions, to those persons responsible for the preparation and review of advertising material covered by the order, and to Charles Revson's Beauty Advisors; and to report to the Commission its compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment of 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.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 93-21995 Filed 9-8-93; 8:45 am]
BILLING CODE 6750-01-M

[Docket 9255]

Trans Union Corp.; 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, an Illinois consumer reporting agency to cease and desist from failing to require, in its contracts, that those who obtain

consumer reports from the company, in the form of lists developed through credit prescreening, make a firm offer of credit to each person on the list and take reasonable steps to enforce those contracts.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur Levin, FTC/S-4429, Washington, DC 20580. (202) 326-3040.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), 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)).

In the matter of Trans Union Corporation, a corporation.

Agreement Containing Consent Order To Cease and Desist

This agreement herein, by and between Trans Union Corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Trans Union Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 555 West Adams Street, Chicago, Illinois.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of sections 604 and 607 of the Fair Credit Reporting Act, and has filed answers to said complaint denying said charges. This agreement has application only with respect to the acts and practices alleged in paragraphs four and five of that Complaint.

3. Respondent admits all the jurisdictional facts set forth in the

Commission's complaint in this proceeding.

4. 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) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a 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 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 respondent, in which event it will take such action as the Commission may consider appropriate, or issue and serve its decision, in disposition of this part of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission, or that the facts alleged in the complaint other than the jurisdictional facts are true. While Trans Union Corporation believes that entry of this Order is in its interest, Trans Union Corporation specifically denies the allegations of the Complaint and denies that it has violated any law as alleged in the Complaint or otherwise.

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 § 2.32 of the Commission's rules, the Commission may, without further notice to proposed respondent:

(a) Issue its Decision containing the following order to cease and desist in disposition of this part of the proceeding; and
 (b) 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 decision containing the agreed-to Order to respondent's address as stated in this agreement shall constitute service. 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.

8. Respondent has read the proposed 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. 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

For purposes of this Order, the following definitions shall apply:

a. "Trans Union" means Trans Union Corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device.

b. The Fair Credit Reporting Act ("FCRA") refers to 15 U.S.C. 1681-1681t, as amended or as it may hereinafter be amended.

c. The terms, "Person," "Consumer," "Consumer Report," and "Consumer Reporting Agency," are defined as set forth in sections 603 (b), (c), (d), (f), respectively, of the FCRA, 15 U.S.C. 1681a(b), 1681a(c), 1681a(f).

d. "Credit Information" means the information Trans Union maintains bearing on any of the characteristics listed in section 603(d) of the FCRA with respect to any Consumer that Trans Union obtains from Subscribers, court records or any other source and from which Trans Union creates Consumer Reports.

e. "Credit Prescreening" means the process whereby Trans Union, utilizing Credit Information, compiles or edits for a client a list of Consumers who meet specific criteria and provides this list to the client or a third party (such as a mailing service) on behalf of the client for use in soliciting those Consumers for an offer of credit.

I

It is ordered that, Respondent Trans Union, in connection with the furnishing of consumer reports, does cease and desist from failing:

1. Within ninety (90) days of the date of this Order, to require in Trans Union's contracts that those who obtain Consumer Reports from Trans Union in the form of lists developed through Credit Prescreening make a firm offer of

credit to each Person on the lists and take reasonable steps to enforce those contracts.

II

It is further ordered that, Respondent shall distribute a copy of this Order to all present and future management officials having supervisory responsibilities for administration, sales, advertising or policy with respect to the subject matter of this Order in each of its subsidiaries and operating divisions dealing with credit prescreening, and shall secure from each such individual a signed statement acknowledging receipt of this Order.

III

It is further ordered that, For the five (5) year period following entry of this Order, Respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in Respondent which may affect compliance obligations arising out of the Order.

IV

It is further ordered, That Respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this Order.

V

It is further ordered, That Respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, signed by the Respondent and setting forth in detail the manner and form of its compliance with this Order.

VI

If the FCRA is amended (or other similar federal legislation enacted) or the FTC issues any interpretation of the FCRA, relating to any obligation imposed on Trans Union herein, which creates any new requirement that directly conflicts with any obligation imposed on Trans Union by this Order, Trans Union may conform the manner in which it conducts its business as a Consumer Reporting Agency or its use of Credit Information to the requirements of such new statutory provision or interpretation; provided however that, Trans Union shall notify the Commission promptly if it intends to change its conduct as provided for in this section, and provided further that

nothing in this provision shall limit the right of the FTC to challenge Trans Union's actions hereunder and to seek enforcement of Trans Union's obligations under this order. For purposes of this Order, and by way of example only, a "direct conflict" between this Order and a new statutory amendment or interpretation shall include a requirement in any such amendment or interpretation that a Credit Reporting Agency complete a task or obligation addressed in this Order in a greater period of time than is specified in the Order.

VII

This Order does not address the current practice engaged in by Trans Union of compiling, for sale to clients, lists of consumers with certain credit-related characteristics, based in whole or in part on credit information, which lists are not developed through Credit Prescreening and it does not in any way limit the right of the Federal Trade Commission to take any appropriate action after entry of this Order pursuant to the FCRA relating to this practice, nor does it limit in any way Trans Union's defense of any such action.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Trans Union Corporation.

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.

The proposed Order resolves the prescreening portions of the administrative complaint issued against Trans Union. In prescreening, a consumer reporting agency sells to a credit grantor, either directly or through a third party, a list of names and addresses of consumers from its consumer reporting database selected on the basis of the creditor's credit-granting criteria. In return, the list user must make a firm offer of credit to all consumers whose names appear on the prescreened list.

The Commission complaint charged that Trans Union violated sections 604 and 607 of the FCRA by providing consumer reports in the form of prescreened lists to credit grantors without adequately requiring or

monitoring that said persons make offers of credit to all consumers on such lists. The proposed Order requires that Trans Union revise its sales contract to require that customers for its prescreened lists make offers of credit to all consumers on the lists and that the company take reasonable steps to enforce its contracts.

The attached settlement is nearly identical to the provision on prescreening contained in a broad-based agreement reached with TRW Inc. in 1991 resolving allegations that that company was engaged in numerous violations of the FCRA. The only difference in the orders concerning prescreening is the insertion of the word "credit" to modify the defined term "prescreening" in the Trans Union consent agreement. This was done to reflect the fact that the pre-complaint investigation and the complaint focused on prescreening for credit offers only.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93-21996 Filed 9-8-93; 8:45 am]

BILLING CODE 8750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Live Attenuated Vaccine Viruses for Human Respiratory Syncytial Virus (RSV) and Parainfluenza Virus Type 3 (PIV3)

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health is seeking capability statements from parties interested in entering into a Cooperative Research and Development Agreement (CRADA) on a project to develop live attenuated vaccine viruses for human respiratory syncytial virus (RSV) and parainfluenza virus type 3 (PIV3). This ongoing project is with the Laboratory of Infectious Diseases (LID). The goal is to (i) develop the methodology for producing replication-competent RSV and PIV3 from DNAs encoding complete copies of the viral genomic RNAs, (ii) introduce defined mutations to produce attenuated vaccine strains, and (iii) evaluate the attenuated viruses as live vaccines in animals and humans. Each of the viral

genomic RNAs has been cloned and sequenced in its entirety and much of the work to construct a complete consensus sequence copy of each RNA has been completed. The feasibility of making virus from DNA is supported by studies in which short synthetic versions of each RNA (the largest one tested was 49% the size of the complete RSV genome) were introduced into infected cells and successfully "rescued" into infectious virus. The LID has extensive experience in evaluating the safety, antigenicity, immunogenicity and efficacy of RSV and PIV3 and vaccines thereof in experimental animals and human volunteers. The commercial collaborator would be asked to contribute and maintain approximately four to six scientists off-site to support the LID-directed project. Some additional funding would be requested to support activities in the LID, and a major funding commitment would be required for the vaccine safety and efficacy studies. Capability statements should include:

(1) Technical expertise of proposed Collaborator Principal Investigator and laboratory group in molecular virology and transfection technology.

(2) Ability of Collaborator to manufacture experimental lots of vaccine, and

(3) Ability to adequately contribute funding to support required vaccine safety and efficacy studies.

ADDRESSES: Capability statements shall be submitted to: Dr. Harold T. Safferstein, Technology Transfer Branch, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, room 7A32, 9000 Rockville Pike, Bethesda, Maryland 20892; Tel: 301-496-2644.

DATES: October 12, 1993.

Dated: August 27, 1993.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93-21965 Filed 9-8-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Scoping Meetings on the Uinta Basin Replacement Projects EIS (Uintah and Upalco Units)

AGENCY: Central Utah Water Conservancy District, Interior.

ACTION: Notice of public scoping meetings to invite public input for use in preparing the EIS for the Uinta Basin Replacement Projects (Uintah and Upalco Units).

SUMMARY: Public Law 102-575 section 201(c) provides for the termination of the authorization for the Uintah and Upalco Units five years after its enactment unless (1) the Secretary of the Interior has executed a cost sharing agreement with the District, and (2) the Secretary has requested, or Congress has appropriated, construction funds for these projects.

CUWCD will serve as the joint lead agency with the Department of the Interior for preparation of the EIS on the Uintah and Upalco Units pursuant to section 102(2)(c) of the NEPA of 1969 as amended and the Central Utah Project Completion Act.

Federal Register Notices (57 FR 62576, Uintah Unit) and (57 FR 62577, Upalco Unit), on December 31, 1992, announced the intent to prepare EIS's for the Uintah and Upalco Units. Initial scoping meetings were subsequently held on January 19, 1993 in Roosevelt, Utah, January 21, 1993 in Fort Duchesne, Utah, and January 26, 1993 in Salt Lake City, Utah for the Uintah Unit and on January 20, 1993 in Altamont, January 21, 1993 in Fort Duchesne, Utah, and January 28, 1993 in Salt Lake City, Utah for the Upalco Unit. Summary reports of these scoping meetings are available from the District on request.

The purpose of this second set of scoping meetings is to solicit public comment on the alternatives to be studied in detail and on the scope and content of the Uinta Basin Replacement Projects EIS (Uintah and Upalco Units). Information on alternatives selected for detailed investigation in the development of a combined EIS for both units is available from the District on request.

The EIS for the Uinta Basin Replacement Projects (Uintah and Upalco Units) will evaluate the environmental impacts of the proposed action and alternatives for providing water to irrigation users, the Ute Indian Tribe, municipal and industrial users and for instream flows within eastern Duchesne County and western Uinta County. The EIS will evaluate the environmental impacts of the No-Action alternative, and development alternatives in each unit, including gravity pressure irrigation systems, canal and diversion structure rehabilitations, storage reservoirs, stream restorations, environmental mitigation and enhancement, and other water development related features.

Types of issues include impacts of construction and operation of the improvements, impacts on wetlands and other habitat values in irrigation service areas of Duchesne and Uinta Counties,

quality and quantity impacts of construction and operation on the Duchesne and Green Rivers, impacts on threatened and endangered species, and identification of mitigation and enhancement opportunities.

DATES: The CUWCD seeks participation in the Scoping Meetings from interested members of the public, including potentially affected landowners, public officials, agency representatives, special interest groups, and interested individuals. CUWCD will make every effort to make these meetings accessible to disabled attendees. Please contact CUWCD at (800)-226-7109 with any special needs or requests at least three days prior to the meeting. The times and locations for the meetings are as follows:

- (1) 7 p.m. Tuesday, October 12, 1993, Roosevelt Jr. High School Auditorium, 265 N. 300 W., Roosevelt, Utah
- (2) 7 p.m., Wednesday, October 13, 1993, Salt Lake County Commission Chambers, Governmental Center, 2001 S. State St., Salt Lake City, Utah
- (3) 7 p.m. Thursday, October 14, 1993, Altamont High School Auditorium, Altamont, Utah.

FOR FURTHER INFORMATION CONTACT: An information packet on the project is available upon request from the CUWCD. Written comments or suggestions regarding the scope and or content of the DEIS are invited and should be submitted no later than November 15, 1993. In addition, interested parties can receive when completed, a copy of the DEIS for review and comment. All comments, suggestions, or requests should be addressed in writing to: R. Terry Holzworth, Uinta Basin Replacement Projects, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058-7303, (801)226-7127, (801)226-7150 (fax).

Dated: September 1, 1993.

Jonathan P. Deason,
Director, Office of Environmental Affairs, U.S.
Department of the Interior.

[FR Doc. 93-21934 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[CA-058-4210-02]

Environmental Impact Statement; Modification

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of modification to the environmental impact statement (EIS)

for an effluent pipeline from various Lake County communities to the Geysers Geothermal Field.

SUMMARY: The original proposal (Federal Register, Vol. 58, No. 46, pg 13499) included a back-up disposal option of using the existing Northern California Power Agency "M" well in the event that the steam field was unable to take the effluent. This is no longer the preferred option and, in its place, a wetland disposal alternative has been proposed.

This treatment and disposal system alternative may involve a created wetland incorporating wetland vegetation and open water areas. As part of this alternative, the Southeast Regional Wastewater Plant would be upgraded to provide tertiary treatment of effluent. The tertiary effluent would then be discharged to the created wetland flow system for additional treatment prior to discharge to and through the existing Anderson marsh with eventual discharge to Clear Lake.

FOR FURTHER INFORMATION CONTACT: Rich Estabrook, Bureau of Land Management, (707) 462-3873; Mark Dellinger, Lake County Planning Dept., (707) 263-2273.

Renee Snyder,

Clear Lake Resource Area Manager.

[FR Doc. 93-21886 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-40-M

[MT-060-02-4333-11]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that effective immediately the use of off-road vehicles (ORVs) is limited on public lands within the Chain Buttes/Dunn Ridge area, in northern Petroleum County, Montana. This will be in effect during the bird and big game hunting season as established by the Montana Department of Fish, Wildlife and Parks in accordance with the authority and requirements of regulation 43 CFR 8364.1.

DATES: This designation will only be in effect during the bird and big game hunting season. The designation will terminate on December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management (BLM), Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The area includes 92,810 acres. Public land is

administered by the BLM, Judith Resource Area, Lewistown District. This designation is the result of a cooperative effort among BLM, private landowners, U.S. Fish and Wildlife Service, Montana Department of Fish, Wildlife and Parks and Montana Department of State Lands. The purpose of the designation is to prevent damage to soil, vegetative and scenic resources, to open additional private and state lands for hunting, and to reduce landowner/recreationist conflicts so as to provide a higher quality hunt.

The off-road vehicle limitation area is located in northern Petroleum County, Montana. It includes all public lands administered by the BLM north of the Crooked Creek and Dunn Ridge roads.

Hunting within the described block will be subject to the following restrictions:

1. All off-road vehicle travel is prohibited.
2. All roads not signed or otherwise designated as open, are closed to motorized vehicle use.
3. No motorized vehicle use is allowed on closed roads, with the exclusive exception of retrieving downed big game. Big game retrieval is allowed between 10 a.m. and 2 p.m. daily on open or closed roads. Prior to or after these hours, motorized vehicles are not permitted on closed roads or off roads. No off-road vehicle use will be allowed on any lands within this block management area.
4. All public land in this management area is open to walk in hunting.
5. The private land in this management area is open to walk in hunting, except around residential areas, shipping pastures and areas that are signed or otherwise designated as closed.
6. Camping on private land requires landowner permission.
7. Camping is prohibited on Montana Department of State Lands (DSL) property.
8. Camping is permitted on public land (14 day stay limit) within 100 yards of open roads. Direct access by motor vehicle is permitted to and from campsites using the most direct route to avoid damage to soils and vegetation. Such camping is also allowed within a reasonable distance down closed roads after obtaining a special use permit issued by the Judith Resource Area.
9. A DSL recreational use license is required to hunt or fish on state property.
10. Outfitters and other recreation users are required to use certified weed-free feed for their livestock within the management area.

11. Limitations and regulations as found in 43 CFR part 8340 apply.

Dated: August 30, 1993.

David L. Mari,

District Manager.

[FR Doc. 93-21805 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-2300-02; GP3-384; OR-44620]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 140 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171. SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 38 S., R. 5 W.,

Sec. 24, E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 140 acres in Josephine County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival

locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21889 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-385; OR-46668]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 12.25 acres of acquired land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 4 S., R. 7 W.,

Sec. 6, those portions of the Nestucca River Access Road lying in lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$, as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains 12.25 acres in Tillamook County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is

unauthorized. Any such attempted appropriation, including attempted adverse possessions under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21890 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-386; OR-46787]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 64.70 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171. **SUPPLEMENTARY INFORMATION:** Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 4 N., R. 38 E.,

Sec. 7, lots 2 and 3, excepting therefrom the easterly 165 feet.

The area described contains 64.70 acres in Umatilla County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21891 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-388; OR-46645]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 13.75 acres of acquired land to surface entry. The minerals are not in Federal ownership.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 25 S., R. 13 W.,

Sec. 8, lot 3 and the tidelands fronting and abutting thereon.

The area described contains 13.75 acres in Coos County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the

requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21892 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-387; OR-44380 (WASH)]

Order Providing for Opening of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 306.60 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 26 N., R. 32 E.,

Sec. 31, lots 1 and 2, NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$.

The area described contains 306.60 acres in Lincoln County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish

a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessor rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21893 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

[CA-010-4210-04, CACA 33050]

Realty Action; Exchange of Public Land in El Dorado and Amador Counties, CA

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: The following described public land (surface and mineral estate) is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

El Dorado County

T. 9N., R. 10E., M.D.M.
Sec. 12: lots 1 and 7

Amador County

T. 7N., R. 9E., M.D.M.
Sec. 18: S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 38.29 acres, more or less.

The selected public land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**.

The above land is being considered for possible transfer to a nonprofit conservation organization. In exchange, the public would receive private land located on either the North Fork or South Fork of the American River or the Merced River, or marshlands and waterfowl habitat located in the California Central Valley. This proposal is considered to be in the public interest and is consistent with current land use plans.

SUPPLEMENTARY INFORMATION: The above described Federal land would be transferred subject to a reservation to the United States for ditches and canals; also any rights-of-way of record would be identified as prior existing rights.

All necessary clearances including clearances for archaeology, and rare plants and animals would be completed prior to any conveyance of title by the United States.

FOR ADDITIONAL INFORMATION CONTACT: Mike Kelley at (916) 985-4474 or at the address listed below.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

D.K. Swickard,

Area Manager.

[FR Doc. 93-21888 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-4210-04; N-57773]

Realty Action: Exchange of Public Lands in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action N-57773 for exchange of lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, including the mineral estate, is being considered for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,

Sec. 5, lots 5-8.

Sec. 6, lots 1-5, 12-18, S $\frac{1}{2}$ NE $\frac{1}{4}$,

SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$.

Sec. 7, lots 5, 6, 8-12, 14-16, 18-21.

Sec. 21, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 20 S., R. 60 E.,

Sec. 5, lots 1, 7, 8, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,

W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,

NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,

E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,

E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,

NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,

SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,

W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,

SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,

E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,

NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,

W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,

NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 21 S., R. 60 E.,

Sec. 11, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 22 S., R. 61 E.,

Sec. 14, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,

E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
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Aggregating 2318.03 acres (gross).

The lands described herein have been considered but not utilized in previous exchange transactions. Any segregation remaining on the records by virtue of the previous exchange notices is hereby terminated.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid and existing rights, publication of this notice in the *Federal Register*, will segregate the public lands, as described in this Notice, for all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws and from any subsequent exchange proposals filed by any other proponent other than Olympic Nevada Inc. or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the *Federal Register* of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever comes first.

For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: September 2, 1993.

Ben F. Collins,

District Manager.

[FR Doc. 93-22015 Filed 9-8-93; 8:45 am]
 BILLING CODE 4310-HC-M

[OR-943-4210-06; GP3-171; OR-20301, et al.]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, proposes that all of the five separate land withdrawals continue for an

additional 100 years and requests that the lands involved remain closed to surface entry and mining.

DATES: Comments should be received by December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the following identified land withdrawals be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The following identified lands within the Owyhee Project are involved:

1. OR-20301, Secretarial Order dated February 5, 1923, 6,764.44 acres located in Secs. 34 and 35, T. 22 S., R. 44 E., Secs. 2, 3, 4, 9, 10, 17, 20, 21, and 28 to 33, inclusive, T. 23 S., R. 44 E., Secs. 14, 23, and 34, T. 21 S., R. 45 E., Secs. 9, 17, 18, 20, 21, 28, 29, 30, and 31, T. 22 S., R. 45 E., W.M. in Malheur County, approximately 10 miles southwest of Adrian.

2. OR-20302, Secretarial Order dated March 28, 1925, 25,447.27 acres located in Secs. 13 and 24, T. 23 S., R. 43 E., Secs. 9, 10, 13, 14, 15, 20, 21, 23, 24, 28, 29, and 32, T. 26 S., R. 43 E., Secs. 2, 4, 7, 8, 9, 10, 17, 18, 19, 20, 28, 29, 31, 32, and 33, T. 23 S., R. 44 E., Secs. 4, 5, 8, 9, 17, 20, 21, 22, 27, 28, 29, 32, and 33, T. 24 S., R. 44 E., Secs. 3, 4, 5, 8, 9, 10, 14, 15, 22, 23, 26, 27, 34, and 35, T. 25 S., T. 44 E., Secs. 3, 4, 7, 8, 9, 10, 17, and 18, R. 26 S., R. 44 E., Secs. 10, 12, and 35, T. 20 S., R. 45 E., Secs. 13, 14, 23, 24, 26, and 35, T. 21 S., R. 45 E., Secs. 2, 3, 9, 10, and 28 to 33, inclusive, T. 22 S., R. 45 E., Secs. 25 and 26, T. 17 S., R. 46 E., Secs. 9 and 10, T. 18 S., R. 46 E., Secs. 2, 15, 32, and 33, T. 19 S., R. 46 E., Secs. 5 and 20, T. 20 S., R. 46 E., Secs. 7, 8, 16 to 20, inclusive, 22, 27, and 28, T. 21 S., R. 46 E., Secs. 9, 16, 21, 22, 26, and 27, T. 22 S., R. 46 E., Secs. 3, 10, 11, and 14, T. 23 S., R. 46 E., Secs. 18 and 29, T. 16 S., R. 47 E., Sec. 20, T. 17 S., R. 47 E., Sec. 18, T. 22 S., R. 47 E., Sec. 18, 23 S., R. 47 E., W.M. in Malheur County, approximately 16 miles north-northeast of Vale and between 12 and 55 miles south-southeast of Vale.

3. OR-20303, Secretarial Order dated March 17, 1916, 200 acres located in Secs. 34 and 35, T. 21 S., R. 45 E., in Malheur County, approximately 6 miles southwest of Adrian.

4. OR-20304, Secretarial Order dated February 18, 1937, 80 acres located in Sec. 10, T. 18 S., R. 45 E., in Malheur County, 4 miles northeast of Vale.

5. OR-20305, Secretarial Order dated April 30, 1945, 40 acres located in Sec. 14, T. 21 S., R. 45 E., Malheur County, 6 miles west of Adrian.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who

wish to submit comments, suggestions or objects in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the *Federal Register*. The existing withdrawals will continue until such final determination is made.

Dated: August 18, 1993.

Robert D. DeViney, Jr.,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21887 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

Geological Survey

National Environmental Policy Act; Proposed Implementing Procedures (516 DM 6, Appendix 2)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of final revised instructions for the U.S. Geological Survey (USGS).

SUMMARY: The USGS has revised the appendix to the Department's National Environmental Policy Act (NEPA) procedures for the USGS. The revision primarily reflects changes in USGS organization and responsibilities and deletes references to functions that have been transferred to the Bureau of Land Management, and the Minerals Management Service. The Department's procedures were published in the *Federal Register* on April 23, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 2 for the USGS was published on January 23, 1981 (46 FR 7485). The proposed revisions were published on March 22, 1993 (58 FR 15355).

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford A. Haupt, Chief, Environmental Affairs Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 423, Reston, VA 22092.

RESPONSE TO PUBLIC COMMENTS:

Comments were received from the U.S. Environmental Protection Agency, who suggested that standards and thresholds were needed regarding categorical exclusions, pertaining to well drilling, excavations, and access to scientific

stations. These comments have been addressed.

SUPPLEMENTARY INFORMATION: This revised appendix to the Departmental Manual (516 DM 6, Appendix 2) provides specific NEPA compliance instructions for the USGS. In particular, it updates information about the USGS's organizational responsibilities, deletes activities transferred to the Bureau of Land Management and the Minerals Management Service and makes other minor technical changes.

The Appendix must be taken in conjunction with the Department's procedures (516 DM 1-6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508)

Outline

Chapter 6 (516 DM 6) Managing the NEPA Process Appendix 2—U.S. Geological Survey

- 2.1 NEPA Responsibility
- 2.2 Guidance to Applicants
- 2.3 Major Actions Normally Requiring an EIS or EA
- 2.4 Categorical Exclusions

Dated: August 30, 1993.

James F. Devine,

Assistant Director for Engineering Geology.

2.1 NEPA Responsibility

A. The Director of the U.S. Geological Survey (USGS) is responsible for National Environmental Policy Act (NEPA) compliance for USGS activities.

B. The Assistant Director for Engineering Geology procedures policy guidance, direction and oversight for environmental activities including implementation of NEPA, and approves Environmental Impact Statements (EIS) prepared by the USGS. The Assistant Director is also responsible for approving USGS reviews of environmental documents, regulations or rules proposed by other agencies.

C. The Chief, Environmental Affairs Program (Reston, VA), is the focal point for NEPA matters and develops NEPA-related policy and guidance for the USGS. The Chief is responsible for: assuring the quality control of USGS environmental documents; monitoring USGS-wide activities to ensure NEPA compliance; reviewing and commenting on other bureaus' and agencies' environmental documents; managing the assignment of USGS personnel to assist other agencies in developing EISs; and assisting in the performance of specialized studies to support environmental analyses. Information about USGS environmental documents or the NEPA process can be obtained by

contacting the Environmental Affairs Program.

D. The Chiefs of the Divisions or Independent Offices are responsible within their respective organizations for ensuring compliance with NEPA and applicable consultation requirements.

2.2 Guidance to Applicants

Because the USGS does not have any regulatory responsibilities in this area, the USGS has no applicable programs requiring guidance to applicants.

2.3 Actions Normally Requiring an EIS or Environmental Assessment (EA)

A. Approval of construction of major new USGS research centers or test facilities normally will require the preparation of an EIS.

B. An EA will be prepared to aid in deciding whether a finding of no significant impact is appropriate, or whether an EIS is required prior to implementing any action. The EA will be prepared in accordance with guidance provided in 516 DM 3.1. Specifically, an EA is required for all actions which are: (a) not categorically excluded; (b) listed as exceptions to the Departmental categorical exclusions in 516 DM 2 Appendix 2; (c) not being addressed by an EIS.

2.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions specified in Appendix 1 of 516 DM 2, many of which the USGS also performs, the following USGS actions are designated categorical exclusions unless the action qualifies as an exemption from the Department's categorical exclusions under Appendix 2 of 516 DM 2. The exclusions shall apply to internal program initiatives performed in the United States and its Trust Territories and Possessions, including Federal lands and the Outer Continental Shelf (OCS).

A. Topographic, land use and land cover, geological, mineralogic, resources evaluation, and hydrologic mapping activities, including aerial topographic surveying, photography, and geophysical surveying.

B. Collection of data and samples for geologic, paleontologic, hydrologic, mineralogic, geochemical and surface or subsurface geophysical investigations, and resource evaluation, including contracts therefor.

C. Acquisition of existing geological, hydrological or geophysical data from private exploration ventures.

D. Well logging, aquifer response testing, digital modeling, inventory of existing wells and water supplies, water-sample collection.

E. Operation, construction and installation of: (a) Water-level or water-quality recording devices in wells; (b) pumps in wells; (c) surface-water flow measuring equipment such as weirs and stream-gaging stations, and (d) telemetry systems, including contracts therefor.

F. Routine exploratory or observation groundwater well drilling operations which do not require a special access road, and which use portable tanks to recycle and remove drilling mud, and create no significant surface disturbance.

G. Test or exploration drilling and downhole testing, including contracts therefor.

H. Establishment of survey marks, placement and operation of field instruments, and installation of any research/monitoring devices.

I. Digging of exploratory trenches requiring less than 20 cubic yards of excavation.

J. Establishment of seasonal and temporary field camps.

K. Off-road travel to drilling, data collection or observation sites which does not impact ecologically sensitive areas such as wilderness areas, wetlands, or areas of critical habitat for listed endangered or threatened species.

L. Hydraulic fracturing of rock formations for the singular purpose of in situ stress measurements.

M. Reports to Surface Management Agencies, or any State, Territorial, Commonwealth or Federal Agencies concerning mineral and water resources appraisals.

N. Other actions where USGS has concurrence or coapproval with another Department of the Interior bureau and the action is a categorical exclusion for that bureau.

O. Minor, routine, or preventive maintenance activities at USGS facilities and lands, and geological, hydrological, or geophysical data collection stations.

P. Minor activities required to gain or prepare access to sites selected for completion of exploration drilling operations or construction of stations for hydrologic, geologic, or geophysical data collection.

[FR Doc. 93-21884 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-31-M

INTERNATIONAL TRADE COMMISSION**(Investigations Nos. 731-TA-661 and 662 (Preliminary))****Color Negative Photographic Paper and Certain Chemical Components From Japan and the Netherlands****AGENCY:** United States International Trade Commission.**ACTION:** Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-661 and 662 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and the Netherlands of color negative photographic paper (CNPP) and certain chemical components¹ that are alleged to be sold in the United States at less than fair value. CNPP is provided for in subheadings 3703.10.30 and 3703.20.30 of the Harmonized Tariff Schedule of the United States (HTS); chemical components are provided for in chapters 29 and 37 of the HTS. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 15, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

¹ CNPP is sensitized, unexposed, silver-halide color negative photographic paper, whether in master rolls, smaller rolls, or sheets. CNPP includes any sensitized paper used for producing prints from color negative film; it may also be used to form color positives from color negative images created digitally (electronically) on a variety of display devices, including cathode ray tubes. Chemical components are those chemical mixtures and compounds (including their precursors for which there are no significant independent uses) used in making CNPP and for which there are no significant independent uses. Such chemical components include sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, dispersions, and their precursors.

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:**Background**

These investigations are being instituted in response to a petition filed on August 31, 1993, by Eastman Kodak Company, Rochester, NY.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9 a.m. on September 22, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202-205-3180) not later than September 17, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A

nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 27, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 3, 1993.

By order of the Commission.

Donna R. Koehnke,*Secretary.*

[FR Doc. 93-22024 Filed 9-8-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-348]**Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof**

Notice is hereby given that the prehearing conference in this proceeding scheduled for September 7, 1993, and the hearing scheduled to commence immediately thereafter (58 FR 45355) are cancelled.

The prehearing conference is rescheduled to commence at 9 a.m. on September 13, 1993, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the *Federal Register*.

Issued: September 3, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93-22025 Filed 9-8-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-343]

Certain Mechanical Gear Couplings and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to All Respondents on the Basis of Settlement Agreements and a Consent Order; Issuance of Consent Order; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 18) which terminated the above-captioned investigation on the basis of settlement agreements and a consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3097.

SUPPLEMENTARY INFORMATION: On April 15, 1993, complainant Kop-Flex, Inc. (Kop-Flex) and respondents K-Power Products, Inc. (K-Power) and A.R. Hutchings filed a joint motion to terminate the investigation as to Hutchings on the basis of a proposed consent order and consent order agreement and as to K-Power on the basis of settlement agreements. On June 25, 1993, the presiding ALJ issued an ID (Order No. 17) terminating the investigation on the basis of the proposed consent order and settlement agreements. On July 30, 1993, the Commission determined to review and remand the ID to the ALJ for further proceedings consistent with the Commission's Order. The basis for the Commission's review and remand of the ID was that the proposed consent order directed to Hutchings was ambiguous, and might be interpreted to be extraterritorial in scope, thus exceeding the Commission's jurisdiction.

The parties subsequently modified the proposed consent order and on August 13, 1993, filed a Modified Joint Motion to Terminate the investigation (Motion Docket No. 343-33). On August 18, 1993 the Commission investigative attorney filed a response in support of the

Modified Joint Motion. On August 20, 1993, the ALJ issued an ID granting the modified joint motion to terminate (Order No. 18). No petitions for review or public or agency comments were filed.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-2648.

Issued: September 2, 1993.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-22027 Filed 9-8-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 731-TA-653
(Preliminary)]

Sebacic Acid From the People's Republic of China

Determination

On the basis of the record¹ developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of sebacic acid,² provided for in subheading 2917.13.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² For purposes of this investigation, sebacic acid is defined as all grades of the dicarboxylic acid with the formula (CH₂)₈(COOH)₂. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C₁₀ dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, polyesters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

in the United States at less than fair value (LTFV).

Background

On July 19, 1993, a petition was filed with the Commission and the Department of Commerce by Union Camp Corp., Wayne, NJ, alleging that an industry in the United States is materially injured by reason of LTFV imports of sebacic acid from the People's Republic of China.

Accordingly, effective July 19, 1993, the Commission instituted antidumping investigation No. 731-TA-653 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 26, 1993 (58 FR 39835). The conference was held in Washington, DC, on August 9, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 2, 1993. The views of the Commission are contained in USITC Publication 2676 (September 1993), entitled "Sebacic Acid from the People's Republic of China: Investigation No. 731-TA-653 (Preliminary)."

Issued: September 3, 1993.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-22026 Filed 9-8-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-357]

Certain Sports Sandals and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 9, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Deckers Corporation, 1140 Mark Avenue, Carpinteria, California 93013. A supplemental letter was filed on August 23, 1993. The complaint, as supplemented, alleges violations of

section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sports sandals and components thereof, by reason of alleged infringement of claims 1 through 3 of U.S. Letters Patent No. 4,793,075, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Sarah C. Middleton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on September 1, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation is instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain sports sandals and components thereof, by reason of alleged infringement of claims 1 through 3 of U.S. Letters Patent No. 4,793,075, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Deckers Corporation Inc., 1140 Mark Avenue, Carpinteria, California 93013.

(b) The respondents are the following companies alleged to be in violation of

section 337, and are the parties upon which the complaint is to be served:

Sears Roebuck and Company, Inc., Sears Tower, Chicago, Illinois 60684.

Kinney Shoe Corporation, 233 Broadway Avenue, New York, New York 10279.

Cougar U.S.A., Inc., 2237 South James Road, Columbus, Ohio 43232.

G.H. Bass & Company, Inc., 360 U.S. Route 1, Portland, Maine 04105.

Brown Group Retail Inc., 8350 Maryland Avenue, Saint Louis, Missouri 63105.

Smith's Food & Drug Centers, Inc., 1550 S. Redwood Road, Salt Lake City, Utah 84130.

Burch's Fine Footwear, Inc., 223½ Valley River Court, Eugene, Oregon 97401.

Fang Chun Ind. Ltd. (Pan Yu), 1-2F 7A Building Lian Hua, Shan Bondeal Processing, Zone Pan Yu Guang Shou, Peoples Republic of China, 86 20 486 23669.

(c) Sarah C. Middleton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401M, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion

order or a cease and desist order or both directed against such respondent.

Issued: September 3, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-22028 Filed 9-8-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6212.

Comments on the following assessment are due 15 days after the date of availability: •

AB-6 (Sub-No. 352X), Burlington Northern Railroad Company—Abandonment Exemption—In Emmons and McIntosh Counties, ND. Ea available 8/30/93.

AB-6 (Sub-No. 353X), Burlington Northern Railroad Company—Abandonment Exemption—In Grand Forks and Walsh Counties, ND. Ea available 8/30/93.

AB-6 (Sub-No. 354X), Burlington Northern Railroad Company—Abandonment Exemption—In McHenry and Bottineau Counties, ND. Ea available 8/30/93.

AB-6 (Sub-No. 355X), Burlington Northern Railroad Company—Abandonment Exemption—In Pembina County, ND. Ea available 8/30/93.

AB-6 (Sub-No. 356X), Burlington Northern Railroad Company—Abandonment Exemption—In Renville County, ND. Ea available 8/30/93.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-21967 Filed 9-8-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgments

Notice is hereby given that defendant Bowling Proprietors' Association of America, Inc. (BPAA) has filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgments in *United States v. American Machine & Foundry Company, Inc.*, *American Machine & Foundry Pincotters, Inc.*, *Brunswick Corporation*, and *Bowling Proprietors' Association of America, Inc.*, 62 Civ. 2650, and *United States v. Bowling Proprietors' Association of America, Inc.*, 64 Civ. 1922, and the Department of Justice (Department), in a stipulation also filed with the Court, has consented to termination of the Final Judgments, but has reserved the right to withdraw its consent based on public comments and for other reasons.

The complaint in *United States v. American Machine & Foundry Company, Inc.*, et al., filed on July 30, 1962, alleged that the defendants had conspired to restrain and monopolize, attempted to monopolize, and monopolized interstate trade and commerce in pinsetters and bowling equipment in violation of sections 1 and 2 of the Sherman Act. The BPAA was charged with having conspired with American Machine & Foundry Company, Inc. and American Machine & Foundry Pincotters, Inc. (collectively AMF), and Brunswick Corporation (Brunswick) to restrict the number and size of bowling establishments in those areas of the country considered by the BPAA to be "overbuilt." The defendants were alleged to have effected their conspiracy through the use of maps and surveys made for the BPAA and a formula adopted by the defendant to prevent construction of new bowling establishments in those localities declared by the BPAA to be overbuilt. The government further alleged that, pursuant to the conspiracy, AMF and Brunswick refused to sell or lease bowling equipment to persons or firms wishing to build or enlarge bowling centers in such saturated areas. A final judgment terminating the action against Brunswick was entered on December 9, 1964. On March 7, 1968, the action against AMF was dismissed and the Brunswick decree was vacated.

The Final Judgment, entered on March 23, 1967, prohibits the BPAA from entering into any agreement, engaging in any conduct or utilizing any formulas, maps, surveys or criteria that

would restrict the construction or expansion of bowling establishments. It further enjoins the defendant from inducing, urging or requiring manufacturers of bowling equipment or other persons to refuse to supply bowling equipment to any other person. It also prohibits the defendant from discriminating among similarly situated applicants for membership in the BPAA in the terms and conditions of such membership.

The complaint in *United States v. Bowling Proprietors' Association of America, Inc.*, filed on June 23, 1964, alleged that the defendant had conspired to restrain and monopolize interstate trade and commerce in the operation of bowling centers in violation of Sections 1 and 2 of the Sherman Act. The defendant was charged with having adopted and enforced tournament eligibility rules that prohibited bowlers from participating in BPAA-conducted or sponsored tournaments unless the bowlers confined their league bowling to BPAA establishments, and which restricted proprietors or employees of non-BPAA establishments from participating in BPAA-sponsored or conducted tournaments.

The Final Judgment, entered on May 19, 1967, ordered the defendant to revoke the offending tournament eligibility and other rules that restrict participation by bowlers and tournament sponsors to BPAA bowling establishments. It also prohibits the defendant from adopting any rules or other provisions that discriminate between BPAA and non-BPAA establishment patrons in determining eligibility to participate in BPAA tournaments; which fix or suggest the prices, terms or conditions imposed by any BPAA proprietor for use of his establishment or which interfere with any BPAA proprietor's solicitation of customers or manner of competing with any other BPAA proprietor; or requiring any affiliated association to do any of the things the defendant is prohibited from doing by the Judgment. The Judgment further required the defendant to include on all its tournament entry blanks and advertising, for a period of one year, a statement that its tournaments are open to bowlers who do their bowling in either BPAA or non-BPAA establishments, and to request that each BPAA member post the statement.

The government has filed with the court a memorandum setting forth the reasons why the government believes that termination of the Final Judgments would serve the public interest. Copies of the Complaints, Final Judgments, the

Government's Memorandum, motion papers and all further papers filed with the court in connection with this motion will be available for inspection at room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgments to the government. Such comments must be received within the sixty-day period established by court order, and will be filed with the court by the government. Comments should be addressed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone 212-264-0390).

Joseph H. Widmar,

Director of Operations, Antitrust Division.
[FR Doc. 93-21894 Filed 9-8-93; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated July 2, 1993, and published in the *Federal Register* on July 14, 1993 (58 FR 37970), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 1, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-21964 Filed 9-8-93; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated February 24, 1993, and published in the Federal Register on March 8, 1993, (58 FR 12974), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer did file written objections with respect to the registration of Mallinckrodt Specialty Chemicals Company. The firm subsequently withdrew its objection. 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 Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 30, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-21963 Filed 9-8-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR**Office of the Secretary****Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to October 18, 1993, Request for Nominations**

The announcement of vacancies to the ERISA Advisory Council is being extended through October 18, 1993. Earlier candidates whose nominations have been acknowledged need not reapply.

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Sunday, November

14, 1993. The groups or fields represented are as follows: employee organizations, corporate trust, investment management, employers (multiemployer plans), and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perking Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N-5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 18, 1993. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 3rd day of September 1993.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 93-21999 Filed 9-8-93; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD**Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Whistleblower Appeals"**

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of call for riders for the Board's publication, "Questions & Answers About Whistleblower Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Whistleblower Appeals," will be

available on a rider basis from the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 3-00203.

DATES: Agency requisitions must be received by the Government Printing Office on or before November 8, 1993.

ADDRESSES: Interested departments and agencies should send requisitions from their Washington, DC, headquarters office authorized to procure printing to the Government Printing Office, Requisition Section, room C-836, Washington, DC 20401. The estimated cost is approximately 50 cents per copy.

FOR FURTHER INFORMATION CONTACT: Duward Sumner, Office of Management Analysis, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, 202-653-8892.

SUPPLEMENTARY INFORMATION: This publication contains information on the rights of Federal employees to appeal personnel actions allegedly based on whistleblowing to the Board and to request stays of such actions. It includes information on how to file whistleblower appeals and stay requests with the Board and other procedural information regarding the appeals process for whistleblower appeals. The publication is written in a question and answer format to enhance understanding.

In making this publication available, the Board intends to provide general information about whistleblower appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

This requisition is for reprinting the latest edition of the publication, dated May 1992. Certain revisions may be made prior to printing, however, if legislation is enacted that affects information in the booklet. Currently, there are bills pending before the Congress that would make various changes in Federal whistleblower protections.

Because of budgetary constraints, the Board is unable to fill large volume orders for this publication; therefore, agencies are urged to take advantage of this opportunity to order copies directly from the Government Printing Office.

Dated: September 3, 1993.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 93-22031 Filed 9-8-93; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-075]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by October 12, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358-1374.

Reports

Title: Origin-Destination Survey.

OMB Number: 2700-xxxx.

Type of Request: New.

Frequency of Report: On Occasion.

Type of Respondent: Individuals or households and Federal agencies or employees.

Number of Respondents: 10,000.

Responses per Respondents: 1.

Annual Responses: 10,000.

Hours per Response: .0625.

Annual Burden Hours: 625.

Abstract-Need/Uses: The origin and destination survey data will be used to provide management information to NASA in order to determine requirements for facility planning for the East Campus development.

Dated: September 1, 1993.

James D. Radosevich,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93-21936 Filed 9-8-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-074]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: September 21, 1993, 8:30 a.m. to 4:30 p.m.; and September 22, 1993, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Figge International, Crystal Square 3, suite 705, 1735 Jefferson Davis Highway, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864-8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Facility Working Group Reports
- Facility Study Office Report
- Near Term Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 2, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 92-21937 Filed 9-8-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-073]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Qvinta, Inc., Oxon Hill, Maryland, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,029,216, entitled "Visual Aid for the Hearing Impaired," filed on July 2, 1991. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATES: Comments to this notice must be received by November 8, 1993.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358-2041.

Dated: August 31, 1993.

Edward A. Frankle,
General Counsel.

[FR Doc. 93-21938 Filed 9-8-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION**Collection of Information Submitted for OMB Review**

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of change to an information collection that will affect the public. Interested persons are invited to submit comments by September 30, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer*. Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335. Copies of materials may be obtained at the above

address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer*. Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Grant Proposal Guide (Formerly Grants for Research and Education in Science and Engineering)

Affected Public: Individuals, State and Local Governments, businesses or other for profit, non-profit institutions, and small businesses or organizations

Respondents/Reporting Burden: 38,000 respondents; 120 hours per average response.

Abstract: The National Science Foundation supports research in most scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, nonprofit, and other research organizations. These awards are based on proposals submitted to the Foundation.

Dated: September 2, 1993.

Herman G. Fleming,
Reports Clearance Officer.

[FR Doc. 93-21929 Filed 9-8-93; 8:45 a.m.]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering approving an exemption from 10 CFR 50.120. This exemption would be granted to the Sacramento Municipal Utility District, the licensee for the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

Environmental Assessment**Identification of Proposed Action**

The NRC, on its own motion, is considering granting a full exemption from the training program establishment, implementation, and maintenance requirements of 10 CFR 50.120. The licensee, in its letters dated July 19 and July 29, 1993, provided supplemental information supporting this action.

The Need for the Proposed Action

The Rancho Seco Nuclear Generating Station permanently ceased power operation in June 1989, fuel was moved from the reactor and placed into the spent fuel pool and a detailed plan to decommission the facility was developed. The proposed exemption would relieve the licensee from the requirements of 10 CFR 50.120. However, it would not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

Fuel handling accidents and complete loss of offsite power continue to be possible events at Rancho Seco Nuclear Generating Station. These events were addressed in Chapter 14 of the Rancho Seco Nuclear Generating Station Updated Safety Analysis Report and the licensee "Revision to Permanently Defueled Technical Specification Bases," dated September 23, 1992. The staff reviewed the licensee analysis and found the offsite radiological consequences acceptable. Additionally, the Sacramento Municipal Utility District is no longer required to conduct offsite emergency planning. Furthermore, the level of personnel activity at Rancho Seco Nuclear Generating Station is low compared to an operating reactor facility and the existing training programs are deemed acceptable, given the low level of activity at the site and the shutdown and defueled status of the plant.

Based on the staff review of the July 19 and July 29, 1993 submittals, the staff concludes that the environmental and safety consequences of accidents which may potentially result in a radiological release are greatly decreased given the permanently shutdown and defueled status of the Rancho Seco Nuclear Generating Station.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the NRC staff concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed

action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff consulted with the State of California regarding the environmental impacts of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letters dated July 19, and July 29, 1993, which are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Central Library Government Documents, 828 I Street, Sacramento, California 95814.

Dated at Rockville, Maryland, this 2nd day of September 1993.

For the Nuclear Regulatory Commission.
Seymour H. Weiss,
Director, Non-Power Reactors and
Decommissioning Project Directorate,
Division of Operating Reactor Support Office
of Nuclear Reactor Regulation.
[FR Doc. 93-21942 Filed 9-8-93; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Safety Research Review Committee; Meeting of Advanced Reactor Subcommittee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRRC Advanced Reactor Subcommittee will hold a meeting on October 15, 1993, in room 293, Building E-40, Massachusetts Institute of Technology, 1 Amherst Street, Cambridge, MA.

The entire meeting will be open to public attendance.

The Subcommittee will review accomplishments, status, and completion plans for research programs pursued in support of design certification review of advanced light-water-reactor systems—particularly the Westinghouse AP600 pressurized-water-reactor system and the General Electric SBWR boiling-water-reactor system. The agenda will be as follows:

8 a.m.—12 noon: Update on AP600 and SBWR testing (vendor and NRC sponsored) and thermal-hydraulic code selection, improvement, and assessment.

1 p.m.—6 p.m.: Containment code selection, validation, and maintenance; structural codes and recent updates of them; reliability of passive systems; prevention or minimization of generic failure mechanisms (notably erosion-corrosion and intergranular stress-corrosion cracking); positions regarding fatigue design criteria; qualification and reliability of valves (notable motor-operated valves and check valves); and modular construction.

The Subcommittee will report to the full Committee on the facts and analyses discussed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/492-3904) between 8 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 1, 1993.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 93-21943 Filed 9-8-93; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; initiation of a Review To Consider Designation of Ukraine as a Beneficiary Developing Country Under the Generalized System of Preferences; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Solicitation of public comment with respect to the eligibility of Ukraine for the Generalized System of Preferences (GSP) program.

SUMMARY: The purpose of this notice is to announce the initiation of a review to consider whether Ukraine satisfies criteria for designation as a beneficiary developing country under the GSP program, and to solicit public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Ukraine meets the designation criteria of the GSP law and should be designated as a beneficiary. The GSP is provided

for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The designation criteria are listed in 19 U.S.C. 2462(a), 2462(b) and 2462(c). Interested parties are invited to submit comments regarding the eligibility of Ukraine for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided by beneficiaries to other developed countries, expropriation without compensation, enforcement of arbitral awards, international terrorism, and internationally recognized worker rights. Other practices taken into account include market access for goods and services, investment practices and intellectual property rights.

An original and fourteen (14) copies of comments regarding Ukraine's eligibility may be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on October 1, 1993.

Information and comments submitted regarding this notice will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.
[FR Doc. 93-21958 Filed 9-8-93, 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32836; File No. SR-NSCC-93-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Temporarily Approval on an Accelerated Basis of a Proposed Rule Change Concerning Book-Entry Money Settlements with Members

September 2, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 21, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-93-08) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through August 31, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Changes

NSCC is asking for temporary renewal of its authority to allow book-entry money settlements with its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 5, 1990, NSCC filed a proposed rule change with the Commission that was noticed in the *Federal Register*,² was subsequently thrice amended,³ and on September 4,

1992, was approved on a temporary basis through August 31, 1993.⁴ The current filing requests an extension of the temporary approval order through August 31, 1994.

As discussed in detail in the approval order of September 4, 1992, the rule change permits NSCC members to satisfy their settlement obligations to NSCC and NSCC to satisfy its settlement obligations to its members by means of electronic intra-bank funds transfers between members' accounts and NSCC's accounts at various settlement banks. Under the proposal, two types of intra-bank funds transfers are available. They include: (1) Electronic transfers whereby on settlement day NSCC pays members by check for next-day value and members pay NSCC by NSCC's directing the settlement banks to make irrevocable transfers from the members' accounts to NSCC's accounts for next-day availability or in reverse with members paying NSCC by check and NSCC effecting payment by electronic transfer ("one-way electronic transfers") and (2) electronic transfers whereby on settlement day both NSCC and members pay by NSCC's directing the settlement banks to make irrevocable transfers for next-day value without any netting ("two-way electronic transfers").

As a prerequisite to either NSCC or any of its members making a settlement payment by an electronic funds transfer, the proposed rule change imposes three requirements. First, any such payment must be effected on a "next-day funds availability basis."⁵ Second, any such payment must be in conformity with an agreement, executed by NSCC and any bank that acts as a payment intermediary, which stipulates that any such funds transfer must be effected on an irrevocable and final basis. Third, any bank that acts as an intermediary for such funds transfers must meet NSCC's standards for letter of credit issuers.⁶

("Division"). Commission (August 14, 1991); (2) Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992); and (3) Peter J. Axilrod, Associate General Counsel, NSCC, to Thomas C. Etter, Jr., Attorney, Division, Commission (July 22, 1992).

⁴ Securities Exchange Act Release No. 31157 (September 4, 1992), 57 FR 42602.

⁵ The term "next-day funds" refers to funds paid today that will be available tomorrow. By contrast, "same-day funds" refers to funds that are immediately available.

⁶ For a bank or trust company to be approved by NSCC to issue letters of credit on behalf of members for purposes of clearing fund requirements, the bank or trust company must meet specific standards in terms of: (1) Minimum levels of stockholders' equity and (2) certain credit ratings for its short term obligations as determined by Standard and Poor's Corporation or Moody's Investor Service, Inc. NSCC Rule 4, Section 1. Securities Exchange Act

Continued

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 28715 (December 12, 1990), 55 FR 715 [File No. SR-NSCC-90-21].

³ Letters from: (1) Jeffrey F. Ingber, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation

NSCC believes that the proposed use of electronic funds transfers provides advantages to NSCC and to its members that include: (1) The elimination of labor and expenses associated with the physical movement of checks, (2) improved security due to reduced handling and movement of paper, and (3) earlier finality of payment. NSCC states in its filing that the proposal is consistent with Section 17A of the Act in that the proposal promotes the prompt and accurate clearance of securities transactions.⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

NSCC has neither solicited nor received any comments.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.⁸ Section 17A(a)(1) of the Act⁹ encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Moreover, Section 17A(b)(3)(F) of the Act¹⁰ requires that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

As set forth in its approval order of September 4, 1992, the Commission agrees with NSCC that substantial marketplace efficiencies can be achieved by authorizing NSCC and its members to effect electronic intra-bank funds transfers to satisfy their settlement obligations. The Commission recognizes that the exchange of checks is labor-intensive and that physical movement of checks can involve loss or delay. Intra-bank funds transfers should, therefore, enhance the proficiency of the transferring and the safeguarding of

funds. Moreover, earlier finality of settlement provides certainty to the marketplace and serves to increase investor confidence in the markets.

NSCC has requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the *Federal Register*. Accelerated approval will permit NSCC and its members to continue using intra-bank funds transfers without any disruption to this program. During the proposal's temporary approval period, the Commission and NSCC have continued to examine the procedures and safeguards applicable to intra-funds transfers and to date the existing program has functioned adequately. Therefore, the Commission believes there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing.

The Commission is temporarily approving this proposed rule change through August 31, 1994, in order that the Commission, NSCC, and other interested parties will be able to continue to assess prior to permanent Commission approval the effects intra-bank funds transfers have on money settlement payments at NSCC. Furthermore, the Commission notes that this order relates only to intra-bank funds transfers for next-day availability of funds. If and when NSCC desires to implement an inter-bank funds transfer program, NSCC will be required to submit for Commission approval a separate and comprehensive Rule 19b-4 filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549. Copies of such filing also will be available for

inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-93-08 and should be submitted by September 30, 1993.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹¹ that the above-mentioned proposed rule change (File No. SR-NSCC-93-08) be, and hereby is, approved through August 31, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22019 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32822; File No. SR-NYSE-93-20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rescission of Exchange Rules 391 and 392 and an Amendment to Exchange Rule 393.10

August 31, 1993.

On April 7, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("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 rescind Rules 391 and 392 and to amend Rule 393.10 to delete any references to Rules 391 and 392. On May 27, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.³

The proposed rule change was published for comment in Securities Exchange Act Release No. 32433 (June 8, 1993), 58 FR 33131 (June 15, 1993). No comments were received on the proposal.

In light of the Commission's rescission of Rule 10b-2, promulgated under the Act,⁴ the Exchange is proposing to rescind its Rules 391 and 392. Rule 10b-2, adopted by the Commission in 1937, was part of a comprehensive package of anti-fraud

¹¹ 15 U.S.C. 78s(b)(2) (1988).

¹² 17 CFR 200.30-3(a)(12) (1991).

¹⁵ U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 25, 1993, clarifying the statement of purpose section of the proposed rule change.

⁴ See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993) (File No. S7-37-92).

Release No. 29444 (July 16, 1991), 56 FR 34061 [File No. SR-NSCC-91-03] (order * * *) approving NSCC's revised standards for approved issuers of letters of credit for clearing fund purposes).

⁷ 15 U.S.C. 78q-1 (1988).

⁸ 15 U.S.C. 78q-1 (1988).

⁹ 15 U.S.C. 78q-1(a)(1) (1988).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F) (1988).

provisions.⁵ Its purpose was to prevent persons participating in the distribution of a security from stimulating the purchase of such, on an exchange, by paying compensation to any person for soliciting such purchases.

In 1942, the Commission amended Rule 10b-2 to permit an exemption for special offerings under a plan filed with the Commission by an exchange.⁶ The NYSE's plan, contained in Rule 391, permits special offerings, at a fixed price and for a fixed period of time, on the Exchange where the quantity of stock involved cannot be absorbed in the regular auction market within a reasonable time and at a reasonable price. Rule 391 permits a person making a special offering to pay a special commission to a broker for a purchasing customer.

Rule 391 specifies a minimum share size of 1,000 shares, with a value of \$25,000. The NYSE believes that, by today's standards, 1,000 shares of stock with a value of \$25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. Rule 391 predates special NYSE block trading rules, such as Rule 127, which defines a block of stock as 10,000 shares or a quantity of stock with a market value of \$200,000 or more.

In 1953, the Commission amended Rule 10b-2 to expand the scope of its exemption by eliminating the requirement that the compensation paid be a "special commission."⁷ NYSE Rule 392, which permits distributions of stock of the type addressed under Exchange Act Rule 10b-2, was also amended to require that compensation be paid in accordance with the terms of a Commission approved plan for an exchange distribution, and that the payer not know or have reasonable grounds to believe that transactions violating the terms of an approved plan were taking place.

In proposing the rescission of Rule 10b-2, the Commission stated that the significant changes that have taken place in the securities markets since Rule 10b-2's adoption, and the coverage of other anti-fraud and anti-manipulation provisions of the federal securities laws, such as Rule 10b-5 and Rule 10b-6, made it appropriate to rescind Rule 10b-2.⁸ The Exchange is now proposing

to rescind Rules 391 and 392, its plans adopted in response to Rule 10b-2, because they are obsolete and have not been utilized in the past ten years. The Exchange is also proposing to amend Rule 393.10 (which pertains to secondary distributions) to delete a reference to the Exchange plans contained in Rules 391 and 392.

According to the Exchange, the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange proposal to rescind Rules 391 and 392 and to amend Rule 393.10 is consistent with these objectives in that it deletes inefficient and unused Exchange plans.

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 sections 6(b).⁹ In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.¹⁰ The Commission believes that the rescission of Exchange Rules 391 and 392, and the amendment to Exchange Rule 393.10 (which deletes any reference to Exchange Rules 391 and 392), is appropriate because these Exchange Rules were adopted in response to recently rescinded Rule 10b-2 under the Act. The Commission believes that the activities with which these Exchange rules are concerned are sufficiently addressed by the general anti-fraud and anti-manipulation provisions of the federal securities laws as discussed in the Commission's release rescinding Rule 10b-2 of the Act. Furthermore, the Commission believes that it is consistent with the Act to allow the Exchange to delete obsolete and redundant rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSE-93-20) is approved.

⁹ 15 U.S.C. 78f(b) (1988).

¹⁰ 15 U.S.C. 78f(b) (5) (1988).

¹¹ 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21896 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32840; International Series No. 579; File No. SR-NYSE-93-31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Global Telecommunications Market Index Target-Term Securities

September 2, 1993.

I. Introduction

On July 19, 1993, the New York Stock Exchange, Inc. ("NYSE" 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 list and trade Market Index Target-Term Securities ("MITTS"), the return of which is based upon a global portfolio of securities of telecommunications companies ("Global Telecommunications Portfolio").³

Notice of the proposed rule change was published for comment and appeared in the *Federal Register* on August 5, 1993.⁴ No comments were received on the proposal. This order approves the proposal.⁵

¹ 17 U.S.C. 200.30-3(a)(12) (1991).

² 15 U.S.C. 78s(b)(1) (1982).

³ 17 CFR 240.19b-4 (1991).

⁴ The Global Telecommunications Portfolio is a static portfolio consisting of 22 equity securities, either listed as common shares in the United States, American Depositary Receipts ("ADRs"), or Global Depositary Receipts ("GDRs", which together with ADRs, are hereinafter collectively referred to as Depositary Receipts or "DRs"), with companies providing information services, basic telecommunications services, and specialized services within the telecommunications industry. A depositary receipt is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the DRs, at a custodian bank in the foreign issuer's home country. The securities which comprise the Global Telecommunications Portfolio are securities issued by corporations formed under the laws of the United States, United Kingdom, Canada, the Philippines, Chile, New Zealand, Hong Kong, Israel, Spain, Mexico, Brazil, Argentina, Sweden, and France.

⁵ See Securities Exchange Act Release No. 32696 (July 29, 1993), 58 FR 41819.

⁶ This order specifically approves a MITT based on the Global Telecommunications Portfolio. In the future, MITTS proposals based on non-approved

Continued

⁵ See Securities Exchange Act Release No. 1330 (August 4, 1937).

⁶ See Securities Exchange Act Release No. 3146 (February 6, 1942).

⁷ See Securities Exchange Act Release No. 4922 (August 20, 1953).

⁸ The Exchange supported the Commission proposal to rescind Rule 10b-2. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, Commission, dated December 29, 1992.

II. Description of the Proposal

Under Section 703.19 of the NYSE's Listed Company Manual, the Exchange may approve for listing securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.⁶ The NYSE is now proposing under Section 703.19 of the Listed Company Manual to list for trading MITTS based on the Global Telecommunications Portfolio ("Global Telecommunications MITTS"). Global Telecommunications MITTS will conform to the listing guidelines under § 703.19 of the Listed Company Manual, which provide that (1) issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) at least a \$4 million market value; and (5) otherwise comply with the NYSE's initial listing criteria.⁷ In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.⁸ MITTS are non-callable senior hybrid debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch") that

indexes or portfolios would require a separate Rule 19b-4 filing with the Commission.

⁶ See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 and 28217 (July 18, 1990), 55 FR 30056 ("Hybrid Approval Orders").

⁷ The hybrid listing standards in Section 703.19 of the NYSE's Listed Company Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in sections 102.01 and 102.02 of the NYSE's Listed Company Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of \$18 million or total net tangible assets of \$18 million; and (4) earnings before taxes of \$2.5 million in the latest fiscal year and earnings before taxes of \$2 million in each of the preceding two fiscal years, or earnings before taxes of \$6.5 million in the aggregate for the last three fiscal years with a \$4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

⁸ See section 802 of the NYSE's Listed Company Manual. The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than \$5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than \$8 million and average net income after taxes for the past three years is equal to or greater than \$600,000; and (5) net tangible assets available to common stock are equal to or greater than \$8 million and average net income after taxes for the past three years is equal to or greater than \$600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than \$1 million.

provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, a holder of a MITT is entitled to receive from the issuer a minimum portion of the principal amount plus an amount based upon the change in the market value of a stock index or portfolio. Global Telecommunications MITTS are cash-settled in that they give the holder any right to receive any portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the portfolio securities.

According to the NYSE proposal, Global Telecommunications MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with potential additional payments based upon the performance of a portfolio of securities representing the global telecommunications industry. In particular, the proposed Global Telecommunications MITTS will provide 90 percent principal protection of the original issue price at maturity with the opportunity to participate in any upside appreciation of the underlying Global Telecommunications Portfolio. Global Telecommunications MITTS will have a term of five years.

The Global Telecommunications Portfolio consists of securities of 22 telecommunications companies that have significantly different levels of market capitalization, ranging from a high of approximately \$86.8 billion (American Telephone & Telegraph) to a low of \$1.7 billion (Telefonica de Argentina). The securities include the Exchange-listed common stock of seven U.S. telecommunications companies,⁹ the common stock of four foreign issuers (which stock is listed or trading on, or traded over the facilities of, U.S. securities markets),¹⁰ and DRs of 11 foreign issuers.¹¹ The average daily

⁹ The U.S. telecommunication companies include: AT&T, Bell Atlantic Corporation, BellSouth Corporation, GTE Corporation, NYNEX Corporation, Pacific Telesis Group, and Southwestern Bell Corporation. All of these common stocks are listed and traded on the NYSE.

¹⁰ The foreign common stock issuers include: Newbridge Networks (Canada), Philippine Long Distance Telephone (Philippines), Rogers Cantel (Canada), and Tadiran (Israel). Of these stocks, Newbridge Networks and Rogers Cantel are traded through the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system's National Market System ("NMS"), while Philippine Long Distance Telephone is traded on the American Stock Exchange and Tadiran on the NYSE.

¹¹ The Depository Receipts of the foreign issuers include: Alcatel Alsthom Compagnie Generale d'Electricite (France), British Telecommunications (United Kingdom), Compania de Telefonos de Chile (Chile), L.M. Ericsson Telephone Company

trading volume for the components of the Global Telecommunications Portfolio as of June 25, 1993, ranged from 1.9 million ADR shares for Telefonos de Mexico S.A. de C.V., to 11,177 ADR shares for Telefonica de Argentina.¹² In addition, the public float as of June 25, 1993 for the securities comprising the global portfolio ranged from a high of \$83.6 billion for American Telephone & Telegraph to a low of \$1.8 billion for Philippine Long Distance Telephone Company.¹³

At the outset, each of the securities in the Global Telecommunications Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the portfolio. Accordingly, each of the 22 companies included in the Global Telecommunications Portfolio will represent 4.545 percent of the total portfolio at the time of issuance.

The multiplier for each security of the Global Telecommunications Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.¹⁴ There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a

(Sweden), Hong Kong Telecommunications (Hong Kong), Telecom Corporation of New Zealand Limited (New Zealand), Telecomcoes Brasileiras (Brazil), Telefonica de Argentina (Argentina), Telefonica de Espana (Spain), Telefonos de Mexico, S.A. de C.V. (Mexico), and Vodaphone Group (United Kingdom). Of the 11 DRs comprising the global portfolio, only Telefonica de Argentina and Telecomcoes Brasileiras S.A., are not listed and traded by a U.S. securities exchange or quoted through the NASDAQ system. Telecomcoes Brasileiras S.A. is an ADR traded OTC through the NASD's bulletin board, while Telefonica de Argentina is traded both over-the-counter ("OTC") and on the London Stock Exchange ("LSE").

¹² See letter from William R. Massey, Brown & Wood, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated June 28, 1993 ("June 28 Letter").

¹³ *Id.*

¹⁴ Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split or similar adjustment in the case of a DR, to equal the product of the number of shares issued with respect to one share of the portfolio security, or the number of receipts issued with respect to a DR, and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier.

portfolio security will be done unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Global Telecommunications Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Global Telecommunications Portfolio so long as a market price for such security is available. If a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the Global Telecommunications Portfolio Value and Closing Portfolio Value, for so long as no market price exists for that security.¹⁵

The value of the Global Telecommunications Portfolio will initially be calculated once a day by a Merrill Lynch affiliate, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"). These values will be disseminated to investors once a day after 5 p.m. (New York time). The portfolio value, for any day, will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.¹⁶ In addition,

¹⁵ Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

¹⁶ The market prices used for calculation of the portfolio value is the last reported sale price if the portfolio security is listed and traded on a national securities exchange, is a NASDAQ-NMS security, or is included in the OTC Bulletin Board Service operated by the NASD. If a portfolio security is issued by a U.S. company and is not listed on a national securities exchange, is not a NASDAQ-NMS security, or is not included in the OTC Bulletin Board Service operated by the NASD, then the market price is the average of the last available bid and offer prices of the three most active dealers, selected by the calculation agent, MLPFS, in the U.S. OTC market. If the portfolio security is a security of a foreign issuer or is a DR, that is not

the Securities Pricing Service ("SPS"), a division of MLPFS, will calculate and regularly publish the portfolio value during the term of the MITTS.

Moreover, MLPFS and SPS have undertaken to implement certain surveillance and compliance procedures with respect to the dissemination of the portfolio value, requiring that the portfolio value be announced only through public dissemination and restricting the access of the MLPFS trading desk to the portfolio value determined by SPS.

Global Telecommunications MITTS will be denominated in U.S. dollars¹⁷ and will entitle the owner at maturity¹⁸ to receive an amount based upon the percentage change in the value of the Global Telecommunications Portfolio from the date of issuance to the "final calculation period," subject to a minimum repayment amount of 90% of the original principal amount. The "final calculation period" is a specified number of days prior to the maturity date.¹⁹ The average value of the Global Telecommunications Portfolio during

listed on a national securities exchange in the U.S. or is not a NASDAQ-NMS security or included in the OTC Bulletin Board Service operated by the NASD, then the market price is the last reported sale price on the securities exchange on which the portfolio security is listed having the greatest volume of trading for the preceding calendar month as determined by MLPFS, provided that if such last reported sale price is for a transaction that occurred more than 4 hours prior to the close of such exchange, then the market price is the average of the last available bid and offer price on such exchange. If a foreign-issued portfolio security is not listed or trading on any securities exchange or if the last reported sale price or bid and offer are not obtainable, then the market price is the last reported sale price on the OTC market with the greatest volume of trading as determined by MLPFS. However, if such last reported sale price is for a transaction which occurred more than 4 hours prior to when trading in such OTC market typically ends, then the market price is the average of the last available bid and offer price of the three most active dealers, as selected by MLPFS. If MLPFS is required to use the bid and offer price for a portfolio security to determine the market price of such portfolio security, then MLPFS will not use any bid or offer price announced by MLPFS or any other affiliate of Merrill Lynch. See July 9, 1993 Letter *infra* note 35.

¹⁷ A number of portfolio securities have been issued by non-U.S. companies, and are quoted in currencies other than U.S. dollars. Therefore, investments in securities indexed to the value of non-U.S. securities may involve greater risks, subject to fluctuations of foreign exchange rates, future foreign political and economic developments, and the possible imposition of exchange controls or other foreign governmental laws or restrictions applicable to such investments.

¹⁸ The maturity date for Global Telecommunications MITTS is five years from issuance.

¹⁹ In particular, the final calculation period for Global Telecommunications MITTS will consist of the 60 business days prior to maturity of the security. Within this time period, Merrill Lynch will use for calculation purposes, the first 30 business days that occur without a market disruption event.

the final calculation period will be used in calculating the amount holders will receive upon maturity.²⁰

If the market value of the portfolio has declined, the holder will receive not less than 90% of the original principal amount of the security. For example, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than ten percent, the holders of the first issue of Global Telecommunications MITTS will receive 90 percent of the principal amount of the securities. The payment in addition to the minimum principal amount at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

Like other MITTS listed on the NYSE, Global Telecommunications MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Global Telecommunications Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Global Telecommunications Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.²¹

Because MITTS are linked to a portfolio of equity securities, the NYSE's existing equity floor trading rules will apply to the trading of MITTS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading MITTS.²² Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading MITTS prior to, or promptly after, the completion of the transaction. Third, MITTS will be

²⁰ The closing value for the Global Telecommunications Portfolio will be determined by an affiliate of Merrill Lynch, MLPFS, and will equal the sum of the products of the average market price and the applicable multiplier for each portfolio security over the final calculation period.

²¹ Merrill Lynch will deposit registered global securities representing Global Telecommunications MITTS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

²² NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will prior to trading MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in MITTS and highlighting the special risks and characteristics of the Global Telecommunications MITT.²³

III. Commission Findings and Conclusions

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, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Global Telecommunication MITTS will offer a new and innovative means of participating in the global securities markets for telecommunication companies. In particular, the Commission believes that Global Telecommunications MITTS will permit investors to gain foreign and domestic market equity exposure in the telecommunications area, while at the same time, limiting the downside risk of the original investment.²⁴ Accordingly, the Commission has concluded that the NYSE listing standards for Global Telecommunication MITTS are consistent with the Act.

Although MITTS are not leveraged instruments, their payout at maturity will, in part, be derived based upon the underlying portfolio of common stocks and DRs. Specifically, Global Telecommunications MITTS, will allow investors to participate at maturity in the full upside appreciation, if any, of the underlying Global Portfolio, while guaranteeing that investors will receive no less than 90% of the investor's original principal investment regardless of the performance of the underlying Global Portfolio during the five-year

term of the securities. In essence, the Commission believes that MITTS are hybrid securities whose rate of return is priced in relation to an underlying equity portfolio. Accordingly, the level of risk involved in the purchase or sale of a Global Telecommunications MITT is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, the Commission has several specific concerns regarding the trading of these securities.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Global Telecommunications MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Global Telecommunications MITTS and, pursuant to the Exchange's listing criteria, only substantial companies capable of meeting their obligations will be eligible to issue the MITTS.

The Commission notes that MLPFS intends to publish the value of the Global Telecommunications Portfolio once each business day after 5 p.m. (New York time) for dissemination to electronic reporting services as well as newspapers and trade publications. Merrill Lynch asserts that the value of the MITT does not necessarily correlate with intra-day price moves related to the underlying component securities. For example, price movements in the existing Standard & Poor's ("S&P") 500 Index MITTS, according to Merrill Lynch, do not correlate with minute to minute changes in the value of the S&P 500 Index, largely as a result of the time value to maturity of the MITT. Further, Merrill Lynch claims the pricing of the MITT reflects to a greater extent the credit risk of the issuer, Merrill Lynch, in guaranteeing the payment of principal.

As a general matter, the Commission believes that for new derivative products, real-time dissemination of the value of the underlying instrument should be provided to all investors. Nevertheless, the Commission has determined to permit Global Telecommunications MITTS to trade without real-time dissemination at this time for several reasons. First, a MITT is not a leveraged product that has its value determined primarily from the underlying individual security or

security index but rather guarantees recoupment of 90% of the principal amount. Second, in the case of a MITT, price movements in the underlying securities generally will not be the determining pricing factor for the MITT. Rather, other factors such as the credit-worthiness of the issuer will be germane. Third, the MITT should, at least prior to its expiration, trade more like a bond or debt security, based on the issuer's ability to perform rather than the value of the underlying portfolio. The Commission recognizes, however, that as the MITT approaches maturity, the price movements of the underlying portfolio securities may take on greater significance for investors. As a result, Merrill Lynch has agreed to monitor the volatility of the market price of the Global Telecommunications Portfolio MITTS in relation to the underlying Global Telecommunications Portfolio. In the event intra-day volatility due to changes in the Global Telecommunications Portfolio value becomes significant, Merrill Lynch will discuss with the Commission the need to implement more frequent portfolio value dissemination.²⁵ Accordingly, the Commission believes that real-time dissemination of the aggregate market value of the underlying Global Telecommunications Portfolio is not necessary at this time but would nevertheless expect Merrill Lynch, along with the NYSE, to monitor the product to determine if increased reporting is necessary especially as the product approaches maturity.²⁶

The Commission realizes that MITTS do not contain a clearinghouse guarantee (as in the case with standardized options) but are instead dependent upon the individual credit of the issuer.²⁷ This heightens the possibility that a purchaser of Global Telecommunications MITTS may not be able to receive the promised payment of 90% of principal upon maturity. To some extent this risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of

²³ The Commission expects, and the Exchange has agreed, to provide a draft of the MITTS information circular for Commission review prior to its dissemination to members.

²⁴ Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

²⁵ See letter from William R. Massey, Brown & Wood, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated September 1, 1993. Indeed, if the intra-day volatility changes were significant to the pricing of the MITT, we would expect real-time reporting.

²⁶ *Id.* Notwithstanding the above, the Commission still believes that it is useful and beneficial for all investors and market participants to have access to the value of the portfolio on a real-time basis and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area.

²⁷ In this case, the issuer of the Global Telecommunications MITTS will be Merrill Lynch.

\$5 million for its publicly-held shares.²⁸ In addition, the hybrid listing standards further require that an issuer of MITT securities have at least \$4 million in market value. In any event, financial information regarding the issuer of the Global Telecommunications MITT in addition to the information on the issuers of the underlying securities comprising the Global Portfolio will be publicly available.²⁹

There is a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or broker-dealer subsidiary issuing MITTS or providing a hedge for the issue will incur position exposure. This position exposure, if left partially hedged or dynamically hedged, could not only create a risk of non-performance but add a systemic risk in that the broker-dealer will have to hedge the position to minimize losses should the market turn against it. However, the Global Telecommunications MITT issuance (\$25 million in aggregate principal amount) is small in relation to Merrill Lynch's total net worth as not to raise significant concerns.³⁰ Nevertheless, the Exchange should continue to monitor this area.

The Commission believes that the listing and trading of MITTS should not unduly impact the market for the underlying securities comprising the Global Telecommunications Portfolio. First, the underlying securities comprising the portfolio are either well-capitalized stocks,³¹ or in the case of

DRs, represent in dollar terms substantial market value.³² Second, the issuers of the underlying securities comprising the global portfolio, are subject to the reporting requirements under the Act, and the portfolio securities are either listed or traded on, or traded over the facilities of, U.S. securities markets.³³ Third, the Exchange has surveillance agreements in place for at least 86% of the securities in the portfolio for the sharing of market information.³⁴ This in addition to the NYSE's surveillance of MITTS will serve to deter as well as detect any potential manipulation. Fourth, Merrill Lynch, as a market-maker for the DRs not listed on an exchange or quoted through NASDAQ, will not include quotations made by or through Merrill Lynch or its affiliates, when calculating the value of the Global Telecommunications Portfolio.³⁵ Lastly,

Corporation (\$34.2 billion), Newbridge Network Corporation (\$2.8 billion), NYNEX Corporation (\$18.1 billion), Pacific Telesis Group (\$19.5 billion), Philippine Long Distance Telephone Company (\$1.8 billion), Rogers Cantel Mobile Communications (\$2.1 billion), Southwestern Bell Corporation (\$22.4 billion), and Tadiran LTD (\$2.7 billion).

²⁸ The market value capitalization in U.S. dollars for the respective ADR/GDRs issuers is as follows: Alcatel Alsthom Compagnie Generale d'Electricite (\$13.3 billion), British Telecommunications PLC (\$39.3 billion), Companie de Telefonos de Chile S.A. (\$3.3 billion), Hong Kong Telecommunications PLC (\$15.2 billion), L.M. Ericsson Telephone Company (\$8.8 billion), Telecom Corporation of New Zealand Limited (\$3.9 billion), Telecomunioes Brasileiras S.A. (\$9.1 billion), Telefonica de Argentina (\$3.8 billion), Telefonica de Espana (\$10 billion), Telefonos de Mexico, S.A. de C.V. (\$25 billion), and Vodaphone Group PLC (\$6.7 billion).

²⁹ The Commission notes that Telecomunioes Brasileiras S.A. is reported on the electronic bulletin board operated by the NASD, and Telefonica de Argentina, the global share, is traded on the London Stock Exchange and OTC in the U.S. The remaining 20 securities are traded on either the NYSE, Amex, or NASDAQ-NMS. 11 out of the 22 stocks in the portfolio have their common stock traded on the NYSE, Amex, or NASDAQ-NMS. All of these markets have information sharing agreements pursuant to the Intermarket Surveillance Group ("ISG"). In addition of the remaining 11 stocks on which DRs are traded, 10 are ADRs traded in U.S. markets based on stocks from foreign markets, while 1 is a GDR tranche traded on the LSE. The NYSE has surveillance sharing agreements in place with 9 out of these 11 foreign markets underlying the DRs.

³⁰ The NYSE is currently in discussions with the New Zealand Exchange in connection with the depositary receipt, Telecom Corporation of New Zealand Limited, and the Mexican Exchange for Telefonos de Mexico, S.A. de C.V. Market Information Agreements only require that the parties provide each other with market trading activity, and do not require the exchange of information about the identity of the ultimate purchasers of securities or clearing activity.

³¹ As of July 9, 1993, Telecomunioes Brasileiras S.A. and Telefonica de Argentina were the only two securities not listed on a U.S. securities exchange or quoted through the NASDAQ system. Telecomunioes Brasileiras S.A. is an ADR traded

MLPFS has agreed to restrict information with respect to all calculations of portfolio securities so that individuals trading such securities at MLPFS will only be able to receive such information through public means and not prior to its release to the public.³⁶

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because Global Telecommunications Portfolio MITTS are similar to existing MITTS traded on the Exchange. In addition, the proposal was notice for the full 21 day comment period and received no comments. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve the NYSE proposal on an accelerated basis.

IV. Conclusion

Based on the above, the Commission believes the trading of Global Telecommunications MITTS on the NYSE is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR-NYSE-93-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,³⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-22023 Filed 9-8-93; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 2, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ahmanson (H.F.) & Co./DE

OTC through the NASD's bulletin board, while Telefonica de Argentina is traded both OTC and on the LSE. Accordingly, Merrill Lynch, for purposes of calculating the Global Telecommunications Portfolio, would disregard quotations for these securities made by or through Merrill Lynch or any of its affiliates. See letter from William R. Massey, Brown & Wood, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated July 9, 1993 ("July 9 Letter").

³⁶ See June 28 Letter *supra* note 12.

³⁷ 15 U.S.C. 78s(b)(2) (1982).

³⁸ 17 CFR 200.30-3(a)(12) (1992).

²⁸ See *supra* note 8. Issuers of MITTS (as well as other hybrid securities issued according to § 703.19) must either be a listed company in good standing or a non-listed company which meets the Exchange's original listing standards. Merrill Lynch, the issuer of the Global Telecommunications MITTS, is listed and registered under section 12 of the Act on the NYSE.

²⁹ The companies that comprise the underlying Global Telecommunications Portfolio are either reporting companies under the Act or subject to a limited exemption under Rule 12g3-2(b) of the Act. Specifically, all 7 U.S. companies are reporting companies that file reports on Form 10-K, 10-Q and 8-K (similarly 3 foreign issuers also file these reports with the Commission). In addition, 11 foreign issuers file public reports with the Commission through the foreign issuer reporting system on Forms 20-F and 6-K. Accordingly, only 2 issuers (Telecomunioes Brasileiras S.A. and Telefonica de Argentina) are exempt from the filing requirements of section 12(g) of the Act as a result of Rule 12g3-2(b). This Rule, however, does require these issuers to provide the Commission with: (1) Information made public in their home country; (2) information that is required to be filed with a stock exchange on which its securities are traded and which is made public by such exchange; and (3) information distributed or required to be distributed to its security holders.

³⁰ As of June 25, 1993, Merrill Lynch had a net worth of \$6.39 billion.

³¹ The common stocks represented in the global portfolio have the following capitalizations: AT&T (\$83.6 billion), Bell Atlantic Corporation (\$24.9 billion), BellSouth Corporation (\$27.2 billion), GTE

Depository Shares (rep. 1/10 sh. of 6% Cum. Conv. Pfd. Stk. \$.01 Par Value) (File No. 7-11222)
 Borg-Warner Automotive Inc.
 Common Stock, \$.01 Par Value (File No. 7-11223)
 Crown America Realty Trust
 Common Shares of Beneficial Interest, \$.01 Par Value (File No. 7-11224)
 MuniVest Pennsylvania Insured Fund
 Shares of Beneficial Interest, \$.10 Par Value (File No. 7-11225)
 National Golf Properties Inc.
 Common Stock, \$.01 Par Value (File No. 7-11226)
 ROC Communities Inc.
 Common Stock, \$.01 Par Value (File No. 7-11227)
 Salomon Brothers 2008 Worldwide Dollar Government Term Trust Inc.
 Common Stock, \$.001 Par Value (File No. 7-11228)
 Saul Centers Inc.
 Common Stock, \$.01 Par Value (File No. 7-11229)
 Southern Pacific Rail Corp.
 Common Stock, \$.001 Par Value (File No. 7-11230)
 Texas Utilities Electric Co.
 Depository Shares, Ser. A (rep. 1/4 sh. of \$7.50 Cum. Pfd. Stk., without Par Value) (File No. 7-11231)
 Town & Country Trust (The)
 Common Shares of Beneficial Interest, \$.01 Par Value (File No. 7-11232)
 Wolverine Tube Inc.
 Common Stock, \$.01 Par Value (File No. 7-11233)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 22, 1993, 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. 93-21897 Filed 9-8-93; 8:45 am]
 BILLING CODE 8010-01-M

[Rel. No. IC-19679; 811-5317]

Colonial Government Trust; Notice of Application

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregulation under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Government Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 31, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end management investment company that was organized as a business trust under the laws of Massachusetts. On September 4, 1987, applicant registered under the Act as an investment company, and filed a registration statement of register its shares under the Securities Act of 1993. The registration statement was declared effective on March 24, 1988. Immediately after the

Trust's registration statement became effective, the Trust and its principal underwriter decided not to consummate the proposed public offering of its shares. The Trust has conducted no public offering or other operations since March 24, 1988.

2. On April 6, 1988, the Trust distributed all of its assets in complete liquidation to its sole shareholder—its investment adviser, Colonial Management Associates. These assets consisted of Colonial Management's capital contribution of \$100,161 to the Trust. On June 19, 1992, the board of trustees of the Trust adopted a plan of liquidation for the Trust.

3. Applicant has not debts or other liabilities that remain outstanding. Applicant is not a party to any liquidation for the Trust.

3. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
 Deputy Secretary.

[FR Doc. 93-21952 Filed 9-8-93; 8:45 am]
 BILLING CODE 8010-01-M

[Rel. No. IC-19684; 811-3483]

The Guardian Cash Management Trust; Application for Deregistration

September 3, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Guardian Cash Management Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICANT: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving application with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 201 Park Avenue South, Mail Stop 9C, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272-3030, or Barry D. Miller, Senior Special Counsel, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company formed as a Massachusetts business trust. On June 9, 1982, applicant registered as an investment company under the Act and filed a registration statement pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933. Applicant's registration statement became effective, and applicant's initial public offering of its shares commenced, on September 13, 1982.

2. On October 8, 1992, applicant's board of trustees approved an Agreement and Plan of Reorganization (the "Reorganization") between applicant and The Park Avenue Portfolio (the "Portfolio"), a Massachusetts business trust that is registered as an open-end diversified management investment company and is authorized to issue its share of beneficial interest in separate series. Proxy materials relating to the Reorganization were distributed to applicant's shareholders on or about November 10, 1992. Applicant's shareholders approved the Reorganization at a special shareholders meeting on December 10, 1992.

3. Concurrently, the Portfolio's board of trustees, which is comprised of the same individuals as applicant's board of

trustees, voted to create and designate a new series (the "New Series") of the Portfolio named "The Guardian Cash Management Fund," on behalf of which the Portfolio agreed to participate in the Reorganization.

4. By reason of their having a common investment adviser, and common directors and officers, applicant and the Portfolio have been "affiliated persons" as that term is defined in the Act. Applicant relied on the rule 17a-8 exemption to comply with section 17(a) of the Act. Each of the boards of trustees of applicant and the Portfolio unanimously determined that participation in the Reorganization by each of the applicant and the Portfolio was in the best interests of the applicant, the Portfolio, and their respective shareholders, and that the interests of the shareholders of the applicant and the Portfolio, respectively, would not be diluted as a result of the Reorganization. Each board's findings, and the basis upon which they were made, were recorded in the minutes of its meeting held on October 8, 1992.

5. Under the Reorganization, applicant transferred its business and assets and assigned its liabilities to the New Series of the Portfolio, and the New Series acquired all such business and assets, assumed all such liabilities and issued to applicant shares of beneficial interest of the New Series that was equivalent to and had an aggregate value equal to the shares of applicant that were outstanding immediately prior to such transactions (i.e., 37,095,939 shares, having an aggregate net asset value of \$37,095,939 and a net asset value per share of \$1.00). Applicant then distributed the shares of the New Series it received to its shareholders of record at that time *pro rata* in exchange for their shares of the applicant such that each shareholder received a number of shares of the New Series equal to the number of shares of the applicant then held by each such shareholder, and applicant was completely liquidated.

6. All expenses related to the reorganization, approximately \$9,000, were borne by applicant's investment adviser, Guardian Investor Services Corporation.

7. Applicant has dissolved its existence under Massachusetts law by filing a Notice of Dissolution and Termination of Trust with the Office of the Massachusetts Secretary of State and the Clerk of the City of Boston.

8. As of the date of the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is

not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-22018 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19683; 812-8328]

IDEX II Series Fund, et al.; Application

September 3, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IDEX II Series Fund ("IDEX II"); IDEX Total Income Trust ("ITIT") (collectively, IDEX II and ITIT are the "Trusts"); InterSecurities, Inc. ("ISI"); and IDEX Management, Inc. ("IMI").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Trusts and their series, if any, to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATE: The application was filed on March 30, 1993 and amended on July 14, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549.

Applicants, 201 Highland Avenue, Largo, Florida 34640.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Each Trust is authorized to offer and sell its shares in separate series. Only IDEX II, however, currently offers its shares in separate series: IDEX II Growth Portfolio, IDEX II Global Portfolio, IDEX II Tax-Exempt Portfolio, and IDEX II High Yield Portfolio.

2. Applicants request that relief be extended to the Trusts, each present and future series thereof, and any other investment company, or series thereof, that (a) is or becomes part of the same "group of investment companies" as that term is defined in rule 11a-3 under the Act, (b) is distributed, as principal underwriter, by ISI or a person controlling, controlled by, or under common control with ISI, and (c) issues and sells classes of shares on a basis identical in all material respects to that described in the application. (The Trusts and their series, and other investment companies and their series are collectively referred to as "Funds.")

3. IMI and Janus Capital Corporation are the investment adviser and sub-adviser, respectively, to IDEX II Growth Portfolio, IDEX II Global Portfolio, and ITT. ISI and AEGON USA Investment Management, Inc., are the investment adviser and subadviser, respectively, to IDEX II Tax-Exempt Portfolio and IDEX II High Yield Portfolio. ISI is the principal underwriter of each existing Fund.

4. Shares of each existing Fund are sold with a front-end sales charge and certain existing Funds have adopted a plan of distribution pursuant to rule 12b-1 under the Act ("12b-1 Plan").

A. The Multiple Class Distribution System

1. Applicants propose to establish a multiple class distribution system ("Multiple Class System") that would authorize each Fund to sell separate classes of its shares. Applicants propose that the currently issued and

outstanding shares of each existing Fund be redesignated as Class A shares. In addition, each existing Fund could create additional classes of shares ("New Shares").

2. Each class of New Shares would be identical in all respects, except that:

(a) Each class of shares would have a different class designation;

(b) Certain classes may have different sales charges;

(c) Each class with a 12b-1 Plan would bear the expense of payments under the Plan;

(d) Each class could bear certain other expenses that are directly attributable only to that class ("Class Expenses");

(e) Only the holders of a class of shares with a 12b-1 Plan would be entitled to vote on matters pertaining to that Plan; and

(f) The exchange privileges could vary among the classes.

3. Each Fund would be permitted to create an unlimited number of different classes of New Shares in connection with a 12b-1 Plan ("12b-1 Classes"), or no 12b-1 Plan. In addition, the principal underwriter of each Fund may enter into dealer sales and/or servicing agreements ("12b-1 Plan Agreements") with broker-dealers, banks, or other financial institutions under which these organizations may provide distribution services and/or maintenance services ("Distribution" and "Maintenance Services," respectively) to their customers who own New Shares of that Fund. In establishing and implementing the 12b-1 Plans and the 12b-1 Plan Agreements, applicants will comply with subsection (d) of article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD") as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed by an investment company.

4. Since payments under a 12b-1 Plan and other Class Expenses will be borne exclusively by the class to which they are attributable, the net income and net asset value per share of each class may be different than the net income and net asset value per share of other classes of shares in the same Fund.

5. Each class of shares may be exchanged for shares of a class with the same or different characteristics of another Fund within the same "group of investment companies" as that term is defined in rule 11a-3. If a Fund limits the exchange privilege only to classes of shares with the same characteristics, the privilege would apply irrespective of whether the shares are New Shares or existing shares with those characteristics. In addition, shares of each class may be exchanged for shares

of the Cash Equivalent Fund,¹ a money market open-end investment company managed by Kemper Financial Services, Inc. Investors may redeem their shares of the Cash Equivalent Fund and use the proceeds to purchase shares of any Fund of the same class as the shares, if any, the shareholder previously held. Exchanges of Fund shares for shares of Cash Equivalent Fund and exchanges of shares of Cash Equivalent Fund for Fund shares are not subject to any sales charges (including front-end charges, CDSCs, and redemption fees, but excluding service fees if the exchange transaction is less than a particular dollar amount, currently \$1000) and are made based upon the relative net asset values of the respective shares to be exchanged in accordance with section 11 of the Act.

B. The CDSC

1. Applicants also request an exemption to allow the Funds to impose a CDSC on redemptions of certain shares of the Funds ("CDSC Shares"), and to waive the CDSC under certain circumstances. The maximum CDSC is not expected to exceed 5% of the aggregate purchase payments, although it may be higher or lower. Applicants presently contemplate that no CDSC would be imposed on any redemptions of CDSC Shares that were purchased more than 5 years prior to the redemption. The amount of the CDSC would depend on the number of years since the investor purchased the CDSC Shares being redeemed. The CDSC would comply with the requirements of section 26(d) of the Rules of Fair Practice of NASD.

2. The amount of the CDSC would be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the CDSC Shares at the time of purchase, or the amount that represents such percentage of the net asset value of the CDSC shares at the time of redemption. As a result, no CDSC would be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the CDSC Shares purchased. In determining the applicability and rate of any CDSC, it would be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital

¹ Cash Equivalent Fund is not in the same "group of investment companies" as the Trusts. Exchanges of existing Fund shares for shares of Cash Equivalent Fund are not subject to any sales charges and are made based upon the relative net asset values of the respective shares to be exchanged in accordance with section 11 of the Act.

gain distributions, next of shares held by the shareholder for a period equal to or greater than the CDSC period, and finally of other shares held by the shareholder for the longest period of time.

3. The proposed CDSC would not be imposed on any shares issued by the Funds prior to the date of any order granting the requested exemptive relief. In accordance with rule 11a-3 under the Act, no CDSC would be imposed on any exchange by an investor of a particular class of a Fund for CDSC shares of the same class of another Fund.

4. Applicants request relief to permit each Fund to waive the CDSC in any one or more of the following circumstances:

(a) On redemptions following death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended;

(b) In connection with redemptions of CDSC Shares held by an individual retirement account ("IRA") or other qualified retirement plan and which redemptions:

(i) Result from the death or disability of the employee or the tax-free return of an excess contribution;

(ii) Are made to effect a lump-sum or partial distribution from a qualified retirement plan in the case of retirement; or

(iii) Are made to effect a distribution from an IRA, a Keogh Plan, or section 403(b)(7) custodial account that is required because the distributee has reached the age at which distributions are required to commence;

(c) In connection with redemptions of CDSC Shares of a Fund purchased by current or retired trustees of any Trust, or by current or retired officers or employees of any Trust, IMI, ISI, or their affiliated companies, registered representatives of ISI, and by the members of the immediate families of such persons;

(d) In connection with redemptions of CDSC Shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund;

(e) In part, in connection with redemptions by shareholders holding CDSC shares of a Fund worth more than \$1 million (or other specified amount) immediately prior to redemption;

(f) In connection with redemptions of CDSC Shares effected by advisory accounts managed by IMI, ISI, or any affiliated company thereof or of CDSC Shares held by IMI, ISI, or any such affiliated company itself;

(g) In connection with redemptions of CDSC Shares by any tax-exempt employee benefit plan for which

continuation of its investment in a Fund would be improper under applicable law or regulation;

(h) On redemptions of CDSC Shares effected pursuant to the Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the applicable minimum account size;

(i) In connection with redemptions of CDSC Shares made by registered representatives of full-time employees of brokers or dealers which have entered into dealer sales agreements with ISI, or their children, siblings, or parents; and

(j) In connection with redemptions by banks, trust companies, and other financial institutions with trust powers, which use trust funds to purchase CDSC Shares pursuant to the exercise of discretionary investment authority, or with respect to registered investment advisers which purchase CDSC Shares of the Fund.

5. In addition, each Fund (or its principal underwriter, as applicable) may adopt a policy whereby it would provide a *pro rata* credit for any CDSC paid in connection with a redemption of CDSC Shares followed by a reinvestment effected within 30 days in shares of the same class of the same or a different Fund of all or part of the redemption proceeds. Such credit would be distributed by the principal underwriter of the Fund from its house account.

Applicant's Legal Analysis

1. Applicants seek relief from sections 18(f)(1), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that by implementing the Multiple Class System, the Funds may be able to achieve flexibility in meeting the service and investment needs of shareholders and future investors. If New Shares are created, the Funds may be able to address more precisely the needs of particular investors. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of a Fund, since all such shares will participate in all of the Fund's appreciation, income, and expenses in the manner described above.

3. Applicants also seek relief from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1

thereunder to assess and, under certain circumstances, waive a contingent deferred sales charge on redemptions of shares. Applicants believe that their request for exemptive relief to permit the CDSC arrangement would permit the holders of CDSC Shares to have the advantage of greater investment dollars working for them from the time of their purchase of CDSC Shares than if a sales load were imposed at the time of purchase.

Applicant's Conditions

A. The Multiple Class Distribution System

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to one or more of the following:

(a) Expenses assessed to a class pursuant to a 12b-1 Plan, if any, with respect to such class;

(b) The impact of Class Expenses, which are limited to any or all of the following:

(i) Transfer agent fees identified as being attributable to a specific class of shares;

(ii) Stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class;

(iii) Blue sky registration fees incurred by a class of shares;

(iv) Commission registration fees incurred by a class of shares;

(v) Expenses of administrative personnel and services as required to support the shareholders of a specific class;

(vi) Trustees' fees or expenses incurred as a result of issues relating to one class of shares;

(vii) Accounting expenses relating solely to one class of shares;

(viii) Auditors fees, litigation expenses, and legal fees and expenses relating to a class of shares;

(ix) Expenses incurred in connection with shareholders meetings as a result of issues relating to one class of shares; and

(x) Any other incremental expenses subsequently identified which should be properly allocated to a particular class of shares and which, as such, are approved by the Commission pursuant to an amended order or a subsequently adopted rule or interpretation;

(c) The fact that the classes will vote separately with respect to matters relating to the Funds 12b-1 Plan, if any, or any other matters appropriately limited to such class(es);

(d) The different exchange privileges of the classes of shares, if any; and

(e) The destination of each class of shares of a Fund.

2. The board of trustees of the applicable Fund, including a majority of the trustees who are not interested persons of the Fund ("Independent Trustees"), will have approved the Multiple Class System with respect to a particular Fund prior to the implementation of the system by that Fund. The minutes of the meetings of the board of trustees of the Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the determination by the board of trustees that the proposed Multiple Class System is in the best interests of each Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the applicable Fund, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the applicable board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the board of trustees of each Fund, pursuant to its fiduciary responsibilities under the Act and otherwise, will monitor each Fund, as applicable, for the existence of any material conflicts among the interests of the classes of its shares, if there is more than one class. The board of trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each fund's principal underwriter and investment adviser will be responsible for reporting any potential or existing conflicts to the appropriate board of trustees. If a conflict arises, the Fund's principal underwriter and investment adviser, at their own expense, will take such actions as are necessary to remedy such conflict, including establishing a new registered management investment company, if necessary.

5. The principal underwriter of each Fund implementing a Multiple Class System will adopt compliance standards

with respect to when each class of shares maybe appropriately sold to particular investors. Applicants and the other Funds will require all persons selling shares of the Funds to agree to conform to such standards.

6. The board of trustees will receive quarterly and annual statements concerning the amounts expended under the 12b-1 Plans and the related 12b-1 Plan Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee for Distribution or Maintenance Services charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the board of trustee to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustee in the exercise of their fiduciary duties.

7. Dividends and other distributions paid by the Fund with respect to each class of its shares, to the extent any dividends and other distributions are paid, will be declared and paid on the same day and at the same time, and will be determined in the same manner and will be in the same amount, except that the amount of dividends and other distributions declared and paid by a particular class may be different from that of another class because payments made by a class under a 12b-1 Plan and other Class Expenses will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and other distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert ("Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the

Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" in accordance with Statement on Auditing Standards ("SAS") No. 44, "Special Purpose Reports on Internal Accounting Controls at Service Organizations," of the American Institute of Certified Public Accountants ("AICPA"). Ongoing reports (i.e., reports issued subsequent to March 31, 1993) will be "Special Purpose" reports on "policies and procedures placed in operation and tests of operating effectiveness" prepared in accordance with SAS No. 70, "Reports on the Processing of Transactions by Service Organizations," as it may be amended from time to time, or such other applicable auditing standards as may adopted by the AICPA.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and other distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (8) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

10. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another in the Funds.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the board of trustees of each Fund with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the trustees.

12. Each Fund implementing a Multiple Class System will disclose the respective expenses, performance data,

distribution arrangements, services, fees, sales loads, and exchange privileges applicable to each class of its shares in every prospectus, regardless of whether all classes of its shares are offered pursuant to each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of its shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of its shares, each Fund will also disclose the respective expenses and/or performance data applicable to all classes of that Fund's shares. The information provided by an applicant or other Fund for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of that Fund's shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval of, authorization of, or acquiescence in any particular level of payments that any Fund may make pursuant to its rule 12b-1 Plan in reliance on the exemptive order.

B. The CDSC

1. The applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be repropoed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22016 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19682; File No. 812-8426]

September 2, 1993.

John Hancock Mutual Variable Life Insurance Account UV, et al.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: John Hancock Mutual Variable Life Insurance Account UV (the "Account") and John Hancock Mutual Life Insurance Company ("John Hancock").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under section 6(c) of the 1940 Act for exemptions from the following: Those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e-2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c-1, and 27f-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to offer and sell certain multi-option variable life insurance policies (individually, the "Policy," collectively, the "Policies") that provide for the following: A death benefit which will not always vary based on investment performance; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of any remaining unpaid Policy issue charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard mortality risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables"); waiver of front-end sales charges in certain cases; the holding of mutual fund shares funding the Account without the use of a trustee in an open account arrangement and without a trust indenture; and a "free look" right which may provide for the return of amounts other than total premiums paid upon cancellation of a Policy.

FILING DATE: June 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the Secretary of the Commission, and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, John Hancock Place, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 272-2060.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. An application virtually identical to this application was filed by John Hancock Variable Account V, John Hancock Variable Life Insurance Company ("JHVLICO"), and John Hancock on August 18, 1987 (File No. 812-6835). An order was granted by the Commission on December 29, 1987.¹ Applicants are filing this new application to eliminate any concern that the prior order may be deemed inapplicable to the Policies.

2. John Hancock, a mutual life insurance company organized under Massachusetts law, has decided to issue certain variable life insurance policies (including the Policies) itself, rather than through its wholly owned subsidiary, JAVLICO.

3. The Board of Directors of John Hancock established the Account on May 10, 1993, pursuant to Massachusetts law. John Hancock will allocate assets to the Account, from time to time, to support benefits payable under John Hancock's variable life insurance policies, including the Policies.

4. The Account is a separate account registered under the 1940 Act as a unit investment trust. The Account consists of seven subaccounts (the "Subaccounts"), each of which will invest its assets in a different portfolio of John Hancock Variable Series Trust I (the "Fund"). Subaccounts may be added or deleted from time to time.

5. The Policy incorporates certain fundamental features characteristic of

¹ The original application was amended on November 12, 1987. The notice of the filing of the application was issued on November 30, 1987 (Investment Company Act Release No. 16152); an order was granted on December 29, 1987 (Investment Company Act Release No. 16197).

scheduled premium variable life insurance policies contemplated by, and certain "hybrid" variable life insurance policies offered in reliance on, Rule 6e-2. In addition, Policy owners will have the options of: (i) Selecting a "modified" or "level" schedule of basic premiums;² (ii) applying any excess value under the Policy³ to increase the amount of the guaranteed death benefit under the Policy, or to reduce the basic premium of a Policy operating with a "level" premium; and (iii) partially surrendering the basic death benefit, or reducing the amount of the extra death benefit.

6. John Hancock will deduct a premium expense charge of 7.5% of each premium paid. This deduction is for sales expenses (5%) and state premium taxes (2.5%).

7. John Hancock will waive a portion of the sales charge deducted from each premium paid on a Policy with an initial guaranteed death benefit of \$250,000 or higher. The continuation of this waiver, however, is not contractually guaranteed, and the waiver may be withdrawn or modified by John Hancock at any time. Moreover, because the initial guaranteed death benefit may be reduced after issue, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy.

8. John Hancock also will deduct a contingent deferred sales charge ("CDSC") upon surrender or lapse of a Policy during the first eleven Policy years. The CDSC is a percentage of the lesser of (a) the total amount of premiums paid before the date of surrender or lapse or (b) the sum of the "modified" premiums due on or before the date of surrender or lapse. Excess Account Value may be withdrawn from the Policy without imposition of any CDSCs.

² The modified premiums are lower until the insured reaches age 72, at which time a "premium recalculation" is performed, if the Policy owner has not previously elected to have the premium recalculated. The premium recalculation may result in lower or higher subsequent required premiums.

In addition to the basic "level" or "modified" premiums under a Policy, the required premium for each Policy year includes an additional amount if the insured is in a substandard risk category of if optional fixed insurance benefits have been added to the Policy by rider. Part of this additional premium will be collected by John Hancock out of any premium payments which are paid during the year. The remaining additional premium will be deducted from cash value in equal monthly installments during the year.

³ Excess Account Value may result from favorable investment performance. John Hancock's deduction of Policy charges at less than the maximum guaranteed rates, or the payment of premiums in excess of the required premiums.

9. The maximum CDSC is an amount equal to 15% of the modified premium for the first through fifth Policy years, plus 10% of the modified premium for the sixth and seventh Policy years. The greatest CDSC will be applied to Policies that are surrendered or lapse at the end of Policy year six and through Policy year seven. In the eighth through eleventh Policy years, the CDSC decreases each Policy year until it is zero in and after the twelfth Policy year.

10. A portion of the CDSC will be charged on a partial surrender of the basic death benefit during the first twelve Policy years.

11. The total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e-2(b)(13) for a conventional scheduled premium variable life insurance policy, and a Policy owner who surrenders his or her policy or whose policy lapses prior to the twelfth policy year pays no more dollars in sales load than could be charged if the load were deducted entirely from premiums.

12. To help defray the costs of processing premium payments, John Hancock will assess a premium processing charge of not more than \$2 per premium payment. This charge will not be designed to yield a profit to John Hancock.

13. John Hancock will assess an issue charge of \$240 per Policy and \$0.48 per \$1,000 of initial guaranteed death benefit. This charge is for estimated administrative expenses and is deducted on a pro rata basis each month in 48 equal monthly installments. If a Policy is surrendered or lapses, any amount of the issue charge not yet deducted will be deducted from the proceeds. No unpaid issue charge will be deducted on any withdrawal of excess value, partial surrender of basic death benefit, reduction of extra death benefit, or any other transaction not involving a full surrender or lapse of the Policy. John Hancock does not anticipate making a profit on the issue charge.

14. The amount of the issue charge is the same as it would have been if it were designed as a front-end periodic charge. The charge does not take into account the "time value" of money.

15. John Hancock will deduct a maintenance charge from the Account Value (i.e., the amount of assets earning a return for the Policy) on each monthly anniversary at a monthly rate of \$2.50 (which rate may not increase above \$4.00) per Policy, and \$.02 per \$1000 of current basic death benefit. This charge is designed to defray the ongoing costs of administering a Policy, and is not designed to yield a profit to John

Hancock. The aggregate maintenance charge will not exceed \$5.25 per month.

16. The maximum aggregate maintenance charge currently is not contractually guaranteed, and may be changed or withdrawn at any time.

17. John Hancock shall deduct from Account Value a charge of no more than \$5.00 for each transfer of assets among Subaccounts in excess of twelve made by a Policy owner within a single Policy year. Furthermore, upon withdrawals of excess value, John Hancock will deduct from Account Value the lesser of \$25 or 2% of the amount withdrawn.

18. John Hancock will assess a daily mortality and expense risk charge at an effective rate of .6% per annum of the Account assets attributable to the Policy. This charge is designed to compensate John Hancock for assuming the risks that insurers may live for shorter periods of time than John Hancock estimated, and that costs of issuing and administering the Policies may be more than John Hancock estimated.

19. On each monthly anniversary of the Policy, John Hancock will deduct from Account Value a charge for the guaranteed death benefit. This charge currently is set at a monthly rate of \$.01 per \$1000 of basic death benefit. John Hancock represents that, in the future, this charge will not exceed \$.03 per \$1000 of basic death benefit.

20. John Hancock will deduct cost of insurance charges from Account Value on the first day of each Policy month. These charges shall be assessed at rates that do not exceed those prescribed in the 1980 CSO Tables.

21. Under certain circumstances, John Hancock will charge lower current cost of insurance rates under a Policy with a current basic death benefit of \$250,000 or more. These lower cost of insurance rates are not contractually guaranteed, and may be changed or withdrawn at any time by John Hancock.

22. When excess value is applied to purchase extra death benefit or to reduce the amount of basic premium, a 1.5% deduction (which John Hancock represents will not exceed 3%) is made from the amount of excess value so applied. This charge is designed to compensate John Hancock for the risk it assumes in making the additional guarantee represented by the extra death benefit or the lower basic premium rate, as relevant.

23. John Hancock reserves the right to make charges for federal, state, and local taxes. Fund investment advisory expenses and certain other operating expenses of the Fund are indirectly borne by Policy owners.

24. John Hancock imposes three death benefit guarantee risk charges (collectively "Guarantee Risk Charges"): a monthly charge of up to \$.03 per \$1,000 of the amount of guaranteed death benefit which has not been purchased with excess Account Value; up to 3% of the amount of any excess Account Value applied to increase the guaranteed death benefit or, for a Policy operating on a level required premium schedule, to reduce the amount of such level premiums; and up to 3% of the amount applied on a premium recalculation for a modified premium Policy where the new level premium is less than what it would have been had the Policy originally been issued on a level premium basis. These charges compensate John Hancock for the risk that it assumes in guaranteeing death benefits under the Policies, including the risk that the Account Value will not be sufficient to support the guarantees.

25. Under the laws of some states, John Hancock may now or in the future may be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their free "look" right. In such cases, and under the terms of the Policy, John Hancock will refund the sum of the Account Value as of the date John Hancock receives the return Policy, plus the sum of all charges deducted from premium payments and all other charges imposed on amounts allocated to the Account.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to section 6(c) of the 1940 Act from the following: Those provisions of the 1940 Act and those rules specified in paragraph (b) of the Rule 6e-2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii) and (c)(4), 22c-1, and 27f-1 thereunder. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating to Definition of "Variable Life Insurance Contract"

1. Rule 6c-3 grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support available life insurance policies. The exemptions provided by Rule 6c-3 are available only to registered separate accounts whose assets are derived solely from the

sale of "variable life insurance contracts" that meet the definition set forth in Rule 6e-2(c)(1) and from certain advances made by the insurer.

2. A "variable life insurance contract" is defined in Rule 6e-2(c)(1) to include only life insurance policies that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as premiums are duly paid in accordance with the terms of the policy.

3. The death benefit under the Policies is the greater of (a) the guaranteed death benefit (plus all premiums received in a Policy month in which the insured dies) or (b) the Account Value multiplied by a factor sufficient to qualify the Policy as life insurance for Federal income tax purposes.

4. The death benefit under the Policies will vary based upon investment performance to the extent that favorable investment performance creates excess value that is applied to purchase extra death benefit, which in turn increases guaranteed death benefit. The death benefit under a Policy also may vary with investment performance when the Account Value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit is greater than the guaranteed death benefit.

5. Applicants submit that the death benefit under the Policies varies to reflect investment experience within the meaning of Rule 6e-2(c)(1). Applicants concede, however, that the death benefit under the Policies is not precisely the type of variable death benefit contemplated when Rule 6e-2 was adopted, and that the Policies contain other provisions that are not specifically addressed in Rule 6e-2. Accordingly, Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e-2(c)(1) and from all sections of the 1940 Act and rules thereunder specified in Rule 6e-2(b) (other than sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e-2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e-2, except as otherwise set forth herein.

6. Applicants submit that the definition of "variable life insurance contract" in Rule 6e-2(c)(1) was drafted at a time when all the variable life insurance policies then contemplated

clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e-2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such considerations depend on whether a scheduled premium policy also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants submit that, under the types of variable life insurance policies that have been issued in reliance on Rule 6e-2, the extent to which favorable investment experience is used to increase death benefits rather than cash values differs considerably among the policies offered by different issuers. Applicants further submit that, under all policy designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the policy.

8. Applicants represent that, generally speaking, higher death benefits require higher cost of insurance deductions, which in turn result in lower cash values. Applicants submit that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance.

9. Applicants represent that Policy owners can do this by, for example, deciding whether to apply excess value to purchase extra death benefit. Using excess value for this purpose will maximize the guaranteed death benefit in the event of favorable investment experience, but will cause Account Value to be less than it otherwise would be.

10. Applicants further submit that the considerations that led the Commission to adopt Rule 6c-3 and 6e-2 apply equally to the Account and the Policies, and that the exemptions provided by these rules should be granted to the Account and to John Hancock on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

11. Applicants note that proposed amendments to Rule 6e-2 would amend Rule 6e-2(c)(1) to require only that the death benefit may vary based on investment performance.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that proceeds of all payments under a Policy be deposited in the Account and that no payment be made from the Account to John Hancock or any affiliated person of John Hancock, except for bookkeeping and other administrative services.

2. Section 2(a)(35) of Rules 6e-2(b)(1) and (c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. Applicants submit, however, that Rule 6e-2(c)(4) can be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring, in paragraphs (i) and (ii), for example, to other amounts that are not deducted from premiums.

3. Section 27(a)(1) and Rule 6e-2(b)(13)(i) may be construed to contemplate that the sales charge under the Policy will be deducted from premiums.

4. Sections 2(a)(32), 27(c)(1), and 27(d), in pertinent part, prohibit Applicants from selling the Policy unless it is a "redeemable security."⁴ Rules 6e-2 (b)(12), (b)(13)(iv), and (b)(13)(v) afford exemptions from section 27(c)(1), and Rules 6e-2 (b)(13)(iv) and (b)(13)(v) afford exemptions from section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by Rules 6e-2(b)(12), 6e-2 (b)(13)(iv), and (b)(13)(v) may not contemplate a contingent deferred sales charge. Moreover, John Hancock's deduction of the CDSC can be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the Account's current net assets.

5. Rule 6e-2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than subsequently has been permitted. Because of these features, particularly premium flexibility, less than the full amount of required

premiums may be paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e-2 apply under such circumstances, particularly with respect to a contingent deferred sales charge.

6. Applicants submit that the CDSC is similar to the "redemption" charge authorized in section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a redemption charge, which is expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

7. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for full or partial surrender of basic death benefit, withdrawals of excess value, and full or partial reductions in extra death benefit. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her "proportionate share" of the Account—i.e., the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

8. Rule 22c-1, adopted pursuant to section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e-2(b)(12) affords exemptions from Rule 22c-1. Rules 22c-1 and 6e-2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated.

9. John Hancock's CDSC may be deemed inconsistent with section 22(c) and Rule 22c-1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the CDSC will not have the dilutive effect which Rule 22c-1 is designed to prohibit because a surrendering Policy owner would "receive" no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his Policy and after receipt of his request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the

kind of speculative short-term trading that Rule 22c-1 was aimed against, and, even if they could be so used, the CDSC would discourage, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Account, and be available to earn a return for the Policy owner, will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e-2(b)(13) for a conventional scheduled premium variable life insurance policy, and, for a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from a Policy's premium payments. Third, if John Hancock is not permitted to charge a sales load in the form of the CDSC, it would have to deduct the sales load entirely from the premiums, thereby charging persisting (i.e., "long-term") Policy owners more than may otherwise be necessary to recover the distribution costs attributable to such Policy owners. For this reason, Applicants submit that the sales load structure provides greater equity among Policy owners than would a non-deferred sales load.

12. The cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Account reduces the amount at risk (i.e., the amount of death benefit less the Account Value) upon which the cost of insurance charge is based.

13. The CDSC, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the CDSC may not fall neatly within the literal pattern of all provisions discussed briefly above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e-2 would permit assessment of a sales charge on a contingent deferred basis, and that such charges also are authorized by Rule 6e-3(T) for insurance policies able to rely on that Rule.

⁴ Section 2(a)(32) offers the following definition of "redeemable security": "Any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled . . . to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

14. Applicants represent that John Hancock's percentage of sales load will never exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in section 27(a)(2), Rule 6e-2(b)(13)(i) and (b)(13)(v).

15. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating to Collection of Unpaid Issue Charge on Lapse or Surrender

1. John Hancock imposes an issue charge of \$240 per Policy and \$.48 per \$1000 of initial basic death benefit; this charge will be deducted pro rata each month, in 48 equal monthly installments. If a Policy is surrendered or lapses, however, any amount of the issue charge not yet deducted will be deducted from the proceeds. This practice may be deemed to violate sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c-1, for essentially the same reasons as the CDSC might be deemed to violate those 1940 Act provisions and rules.

2. Applicants submit that imposition of the administrative charge for issuance expenses in 48 monthly installments is more favorable to Policy owners than a charge deducted entirely from premiums or from Account Value in the first Policy year. The reduction of the owner's investment in the Account is less than it would be were this charge taken in full in the first Policy year. This results in a larger Account Value initially earning a return for the Policy owner.

3. Applicants further submit that if John Hancock did not collect any uncollected issue charge upon surrender or lapse, the surrendering or lapsing Policy owner would effectively escape paying his or her fair share of issue expenses.

D. Request for Exemptions Relating to Deduction of Insurance Charges From Account Value

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act may be construed to prohibit John Hancock from deducting certain insurance charges from the Account

Value.⁵ Applicants request exemptions from those sections and from Rule 6e-2(b)(13)(iii) to the extent necessary to permit deduction of these insurance charges from Account Value, as described herein.

2. Applicants submit that deduction of cost of insurance charges from Account Value is fair and reasonable, and in accordance with the practice of most other variable life insurance policies.

3. Applicants further submit that deduction of a portion of the charges for substandard risks and incidental insurance benefits from Account Value is also reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for John Hancock to (a) reduce the premium flexibility under the Policy and/or (b) further limit the classes of insureds for whom the Policy will be available and limit or eliminate the kinds of rider benefits John Hancock intends to make available.

4. John Hancock assesses three death benefit guarantee risk charges. These charges compensate John Hancock for the risk it assumes in guaranteeing death benefits under the Policies, including the risk that the Account Value will not be sufficient to support the guarantees. Because of the Policy owner's flexibility with respect to the payment of premiums, John Hancock's method of assessing the risk charges for the death benefit guarantees permits each Policy owner to pay charges more commensurate with the risks under his or her own Policy. Applicants submit that it is more appropriate and suitable to deduct those charges from the Account Value than from premiums, as deducting the charges from premiums would require Policy owners who pay more premiums to subsidize the guarantee risks assumed under the Policies of Policy owners who pay less premiums.

5. John Hancock represents that the level of the death benefit guaranteed risk charges is reasonable in relation to the risks assumed by John Hancock under the Policy. The methodology used to support this representation is an analysis of John Hancock's mortality risks, taking into account such factors as

⁵ John Hancock seeks to deduct the following insurance charges from Account Value: Cost of insurance charges; charges assessed for incidental insurance benefits or for substandard risk classifications; the charge deducted for the risk of guaranteeing the basic death benefit; and the charges imposed for assuming the risk of the additional death benefit guarantees associated with any extra death benefit or reduction of basic premiums which is purchased with excess value or certain premium recalculations under a "level" premium Policy.

John Hancock's contractual right to increase insurance charges above current levels, the level of risk inherent in the various insurance benefits provided by the Policy and the possibility of "anti-selection" risks resulting from Policy owners' exercise of the various flexibility features under the Policy, all based on John Hancock's and its affiliates' experience with other insurance products. John Hancock undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

6. John Hancock further represents that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and Policy owners. John Hancock will keep and make available to the Commission on request a memorandum setting forth the basis of this representation.

7. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: the Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 CSO Tables

1. Rule 6e-2(b)(1) makes the definition of "sales load" in Rule 6e-2(c)(4) applicable to the Policy. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e-2(b)(13)(i) provides an exemption from 27(a)(1) to the extent that "sales load," as defined Rule 6e-2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Table.

2. Rule 6e-2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and the assumed investment return specified in the Policy. Subsequent to the adoption of Rule 6e-2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables. The guaranteed cost of insurance rates under John Hancock's Policy are based on the 1980 CSO Tables. Accordingly, Applicants

request exemptions from section 27(a)(1) and Rules 6e-2(b)(1), (b)(13)(i), and (c)(4) to the extent necessary to permit cost of insurance to be calculated for purposes of testing compliance with the rule based on the 1980 CSO Tables.

3. Applicants represent that proposed amendments to Rule 6e-2 would permit use of either the 1958 or the 1980 CSO Tables for purposes of Rule 6e-2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under an insurance policy.*

4. Applicants represents that state insurance laws require that John Hancock use 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the Policies.

5. Applicants further represent that cost of insurance charges based on the 1980 CSO Tables generally are lower than those based on the 1958 CSO Tables, and that, for the most part, this results in lower charges and higher Policy values than if the charges assert that the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which will pertain to the policies.

F. Request for Exemptions Relating to "Stair-Step" Requirements

1. Applicants represent that section 27(a)(3) of the 1940 Act and Rule 6e-2(b)(13)(ii)—commonly referred to as the "stair-step" provisions—may be deemed inconsistent with deduction of a deferred sales charge. Moreover, Rule 6e-2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than has been permitted subsequently. Because of these "flexibility features," particularly premium flexibility, more or less than the full amount of the required premiums may be paid on or before the relevant due dates. For these reasons, Applicants request an exemption from section 27(a)(3) and Rule 6e-2(b)(13)(ii) to the extent necessary to permit deduction of the front-end sales charge as part of the premium expense charge, and deduction of the CDSC on surrender or lapse of a Policy or partial surrender of the basic death benefit.

2. John Hancock will waive a portion of the sales charge otherwise deducted from each premium paid on a Policy with a current basic death benefit of at least \$250,000. The continuation of this waiver is not contractually guaranteed, however, and the waiver may be withdrawn or modified by John

Hancock at any time. Because the waiver of the front-end sales charge applies only when the current basic death benefit is at least \$250,000, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy. Because section 27(a)(3) and rule 6e-2(b)(13)(ii) appear to prohibit this condition, Applicants request an exemption from those provisions to the extent necessary to permit them to waive the sales charge deducted from premiums under the circumstances described herein.

3. Applicants do not believe that either section 27(a)(3) or Rule 6e-2(b)(13)(ii) apply to deferred sales loads. In this regard, Applicants assert that both the statutory provision and the rule apply by their terms only to "amounts deducted from payments," and a deferred sales load is not deducted from payments.

4. Applicants note that proposed amendments to Rule 6e-2 would modify the stair-step provisions to make them applicable to sales loads deducted other than from payments. Applicants assert that if a modification is necessary to apply these provisions to a deferred sales load, then without such modification the provisions should not apply.

5. Applicants assert that the stair-step requirements are designed to discourage unduly complicated sales load structures. Applicants submit that the sales charge design of the Policy is not unduly complicated and will be fully disclosed in the prospectus pertaining to the Policy. Applicants further submit that sales charges are not designed to generate more revenues from later payments than from earlier payments.

6. Applicants represent that the CDSC, if calculated as a percentage of "modified" premiums due to date, never increases from year to year; the total increases annually by 15% of one year's "modified" premium in the early years and is reduced in later years. In no case is the percentage increase in the CDSC (if calculated as a percentage of one year's "modified" premium) for any year greater than that for the previous year.

7. Applicants further represent that the precise amount of sales load assessed depends on, among other things, the degree to which a Policy owner exercises the premium and other flexibility features of the Policy. The exercise of these features is within the sole control of the Policy owner.

8. Applicants note that in amending Rule 6e-3(T), the Commission specifically indicated that sales charge policies underlying the stair-step

requirement are not contravened by fluctuations in sales load which result from factors beyond the issuers' control. Applicants submit that this principle should be equally applicable in the present context.

G. Request for Exemptions Relating to Custodianship Arrangements

1. In pertinent part, sections 26(a)(1) and (a)(2) of the 1940 Act prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which John Hancock and the Account invest.

2. In pertinent part, section 27(c)(2) of the 1940 Act may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e-2(b)(13)(iii) under the 1940 Act affords an exemption from sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that John Hancock complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee or custodian for the Account, and assuming that John Hancock meets the other requirements set forth in the Rule.

4. Applicants represent that the holding of Fund shares by John Hancock and the Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from those provisions, to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Account, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the purchase and sale of such shares by separate accounts and generally saves costs.

6. Applicants note that, in contrast to the Policies (which are covered by Rule 6e-2), policies covered by Rule 6e-3(T) may rely on Rules 6e-3(T)(b)(13)(iii)(B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e-2(b)(13)(iii) to permit a life insurer (such as John Hancock) to hold the assets of a separate account without a trust

* In addition, Applicants note that Rule 6e-3(T) requires that the 1980 CSO Tables be used for all policies offered in reliance on that Rule.

indenture or other such instrument, and to permit a separate account organized as a unit investment trust (such as the Account) to hold the securities of any registered investment company (such as the Fund) that offers its shares to the separate account in uncertificated form. Applicants also note that the Commission has adopted Rule 26a-2 which affords exemptions essentially similar to those requested here. Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings.

7. John Hancock represents the following: It will comply with all other applicable provisions of section 26 as if it were a trustee or custodian for the Account (subject to the other exemptive relief requested in this application); it will file with the insurance regulatory authority of Massachusetts an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners—the most recent such statement indicated that John Hancock has a combined capital and surplus of at least \$1,000,000; it is examined from time to time by the insurance regulatory authority of Massachusetts as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemption Relating to "Free Look" Right

1. Section 27(f) of the 1940 Act provides that periodic payment plan certificate holders may, within a specified time period, surrender their certificates and receive the account value plus all deductions from gross purchase payments, and Rule 27f-1 provides for notices in connection therewith.

2. Rule 6e-2(b)(13)(viii) provides an exemption from section 27(f) and Rule 27f-1, provided that the Policy owner has the right to return the Policy no later than 45 days after execution of the application for the Policy or, if later, within 10 days after receipt of the Policy or the notice of right of withdrawal by the owner, and receive a refund of all payments made thereunder.

3. John Hancock intends generally to comply with Rule 6e-2(b)(13)(viii), but anticipates that under the laws of some

states, it may now or in the future be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their "free look" right.

4. Applicants assert that section 27(f) presumes that the security owner will bear any investment gains and losses during the "free look" period, and that Rule 6e-3(T)(b)(13)(viii) would permit John Hancock's proposed "free look" procedures for a policy relying on that Rule. For these reasons, Applicants do not regard as particularly significant the failure of Rule 6e-2(b)(13)(viii) to authorize "free look" procedures.

5. Applicants note that no state laws required "free look" procedures at the time Rule 6e-2 was adopted, and that under the policy designs prevalent at that time, the amount of investment depreciation or appreciation during the "free look" period was not likely to be great because premiums in excess of scheduled premiums were not permitted to be paid, and relatively large front-end charges reduced the amount initially allocated to the separate account.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from (i) those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e-2 thereunder, other than section 7 and 8(a), as well as (ii) sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f), and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii) and (c)(4), 22c-1, and 27f-1, meet the standards of section 6(c) of the 1940 Act. The requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-22021 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19680; File No. 812-8428]

John Hancock Mutual Variable Life Insurance Account UV

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: John Hancock Mutual Variable Life Insurance Account UV (the "Account") and John Hancock Mutual Life Insurance Company (the "Company"), collectively the "Applicants."

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), and 27(c)(2) of the 1940 Act, and Rules 6e-2(b)(1), 6e-2(b)(12), 6e-2(b)(13), 6e-2(c)(4), and 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a contingent deferred sales load ("CDSL") provided for under the terms of certain single premium variable life insurance policies (the "Single Premium Policies"), to deduct cost of insurance charges from Account values under the Single Premium Policies and certain annual premium variable life insurance policies (the "Annual Premium Policies"), and to use the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables") in determining compliance of the Annual Premium Policies with the 1940 Act and the rules thereunder.

FILING DATE: The Application was filed initially on June 4, 1993, and amended and restated on August 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Francis C. Cleary, Jr., Esq., John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 272-2060.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company, a mutual life insurance company organized under Massachusetts law, is authorized to transact life insurance and annuity business in Massachusetts and all other states. The Company is the depositor and principal underwriter of the Account.

2. The Company has decided to issue certain variable life insurance policies (including the Single Premium Policies and the Annual Premium Policies) itself, rather than through its wholly owned subsidiary, John Hancock Variable Life Insurance Company ("JHVLIICO"). To facilitate the withdrawal of JHVLIICO from its variable life insurance business in New York state, the Company must assume the Single Premium Policies and the Annual Premium Policies that currently are outstanding in New York state, except any Single Premium Policies and Annual Premium Policies whose owners object to such assumption.

3. For several years, no new offers and sales of the Single Premium Policies and the Annual Premium Policies have been made by JHVLIICO or the Company in New York or any other state, and neither JHVLIICO nor the Company intends to make offers or sales of the Single Premium Policies or the Annual Premium Policies in the near future. Under the Single Premium Policies, policy owners make no premium payments after the initial premium payment.

4. An application virtually identical to portions of this application was filed by JHVLIICO, certain JHVLIICO separate accounts, and the Company on October 10, 1984 (File No. 812-5959). An order was granted on February 11, 1985.¹ Applicants are filing this new application to eliminate any concern that the prior order may be deemed inapplicable to the Single Premium Policies, and to make certain updating changes (relating to both the Single Premium Policies and the Annual Premium Policies) to that prior application.

5. Applicants are mindful that more recent exemptive applications under the 1940 Act to authorize deduction of

CDSLs in connection with variable life insurance policies have requested exemptive relief from certain provisions of the 1940 Act and rules thereunder that were not deemed necessary when such relief was obtained originally with respect to the Single Premium Policies.

6. The Company established the Account on May 10, 1993, pursuant to Massachusetts law, and also serves as principal underwriter of the Account. The Company will allocate assets to the Account, from time to time, to support benefits payable under the Company's variable life insurance policies, including the Single Premium Policies and the Annual Premium Policies. The offering of periodic payment variable life insurance policies funded through the Account will be covered by registration statements filed under the Securities Act of 1933.

7. The Account is a separate account registered under the 1940 Act as a unit investment trust. The Account consists of seven subaccounts (the "Subaccounts"), each of which will invest its assets in a different portfolio of John Hancock Variable Series Trust I (the "Fund"). Subaccounts may be added or deleted from time to time.

8. No "front-end" sales charge has been deducted from the premium payment for the Single Premium Policies. Rather, surrender values under the Single Premium Policies are structured to impose a CDSL.

9. The CDSL under the Single Premium Policies will apply only in the first nine Policy years. Surrender values under each Single Premium Policy will be adjusted to reflect a charge equal to 9% of the cash value of the Single Premium Policy in the first policy year, declining by 1% each year thereafter, until the charge is 1% in the ninth policy year and 0% in all succeeding policy years. Applicants represent that the CDSL will not exceed 9% of the single premium for a policy.

10. The CDSL will apply to full or partial surrender of a Single Premium Policy, and will be imposed only on the amount surrendered, and only in an amount reflecting the permissible percentage charge applicable to the year of surrender, based on the issue date of the policy originally purchased. When a Single Premium Policy is partially surrendered, there is a proportionate reduction in the initial sum insured, the current variable sum insured, the Account value, the surrender value, and the maximum CDSL. The aggregate CDSL charged on more than one partial surrender will not exceed 9% of the single premium for the policy originally purchased.

11. The CDSL under the Single Premium Policies will not apply to a transfer between portfolios of the Fund, or payment of a death benefit. The CDSL will not apply to a loan against a Single Premium Policy, but will limit the amount available for borrowing by the owner of a Single Premium Policy.

12. John Hancock will deduct a cost of insurance charge each month, in advance, over the life of the policy. The cost of insurance rates for the Single Premium Policies will not exceed the rates stated in the 1958 CSO Tables; the rates for the Annual Premium Policies will not exceed the rates stated in the 1980 CSO Tables.

Applicants' Legal Analysis

A. Request for Exemptions Relating to the CDSL

1. Applicants request exemption from Section 2(a)(35) of the 1940 Act, and Rules 6e-2 (b)(1) and (c)(4) thereunder, to the extent necessary for the term "sales load" (as defined in provisions of the 1940 Act and the rules promulgated thereunder) to be deemed to contemplate the CDSL imposed under the Single Premium Policies.

2. Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. The Section contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made.

3. Rule 6e-2(b)(1) provides that, in the context of a variable life insurance, "sales load" shall have the meaning set forth in Rule 6e-2(c)(4). Rule 6e-2(c)(4) defines "sales load" as the excess of a premium payment (as defined in Rule 6e-2(c)(7)) over the sum of certain amounts, including, but not limited to: (i) the amount of surrender value for the first policy year; (ii) the amount of the increase in surrender value for each subsequent policy year that is attributable to payments made and not attributable to investment earnings; (iii) the cost of insurance for the period for which the payment is made, based on the 1958 CSO Tables and the assumed investment rate specified in the policy; (iv) administrative fees; (v) state premium taxes; and (vi) deduction for dividends.

¹ The original application was amended on January 7, 1985. The notice of the filing of the application was issued on January 14, 1985 (Investment Company Act Release No. 14320); an order was granted on February 11, 1985 (Investment Company Act Release No. 14365).

4. Rule 6e-2 may be read only to contemplate sales loads imposed upon a premium payment. Applicant's CDSL will be imposed, if at all, at the time a Single Premium Policy owner surrenders a policy. Consequently, a CDSL may be deemed excluded from the definition of "sales load" in Rule 6e-2, paragraphs (b)(1) and (c)(4).

5. Applicants submit that both the language and the history of Rule 6e-2 anticipated variable life insurance policies with sales charge provisions other than front-end deductions from premiums, and that the timing of the CDSL does not change its essential nature. The CDSL will cover expenses associated with the offer and sale of a Single Premium Policy, including sales commissions, and other sales related expenses, just as a "front-end" sales load does.

6. Applicants submit that construing Rule 6e-2(c)(4) to comprehend CDSLs aligns the language of the Rule with both the 1940 Act and the Commission's contemplation at the time it adopted the Rule. The definition of "sales load" under Rule 6e-2(c)(4) was a construct designed to fit variable life insurance within the framework of the 1940 Act. The artificiality of the definition is reflected, for example, by the fact that the "sales load" is deemed to be the amount remaining after the deduction of specified charges and amounts from the premium. Yet certain of those specified amounts, including the cash value and the cost of insurance are not deducted from a premium. Moreover, the remainder amounts, unlike mutual fund sales loads, vary with the age, sex and risk classification of the policy owner. Therefore, Applicants assert that the applicability of the definition of "sales load" need not be limited to any particular policy design.

7. Applicants submit that a policy providing for a CDSL is consistent with the definition of "redeemable security" within the meaning of section 2(a)(32) and 27(c)(1), as adapted for variable life insurance by Rules 6e-2(b)(12) and (13)(iv).

8. Section 2(a)(32) defines a "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive "approximately his proportionate share" of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) provides that no issuer of a periodic payment plan certificate shall sell such certificate unless the certificate is a "redeemable security." Rules 6e-2 (b)(12) and (13)(iv) afford exemptions from section 27(c)(1), subject to certain conditions, to the extent necessary for the cash value

provisions to be regarded as satisfying the redemption requirements of the 1940 Act.

9. Applicants submit that, although Section 2(a)(32) does not specifically contemplate the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of a "redeemable security." Moreover, Applicants assert that the CDSL is indistinguishable from the "redemption" charge referred to in section 10(d)(4)—described as a "discount from net asset value"—which Congress intended to be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

10. Applicants submit that subparagraphs (b)(12) and (13)(iv) of Rule 6e-2 adapt the concept of redeemable security in the 1940 Act in recognition of the insurance nature of variable life insurance. Moreover, Applicants assert that the record suggests that, in adopting Rules 6e-2(b)(12) and (13)(iv), the Commission determined that a policy providing for a cash surrender value would constitute a "redeemable security" for purposes of the 1940 Act.

11. Rule 22c-1 under the 1940 Act provides, in pertinent part, that a registered investment company which issues a redeemable security may not redeem such security except at a price based on the current net asset value of such security which is next computed after receipt of the tender of such security.

12. Rule 6e-2(b)(12) affords exemptive relief from Rule 22c-1. Applicants note that, when read in conjunction with the other provisions of Rule 6e-2, subparagraph (b)(12) may be construed as being premised on the absence of a CDSL.

13. Applicants submit that the CDSL would not have the dilutive effect that Rule 22c-1 is designed to prohibit because, after the insurance company has received the surrender or exchange request from a Single Premium Policy owner, the surrendering or exchanging Single Premium Policy owner would "receive" no more than an amount equal to the surrender value determined pursuant to the formula set out in his or her policy. Furthermore, variable life insurance policies do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was aimed against. Even if variable life insurance policies could be used for speculative short-term trading, a CDSL would discourage such trading.

14. Rule 6e-2(b)(12)(ii) grants exemption from the uniform offering price requirements of section 22(d) of

the 1940 Act. Applicants assert, however, that the Rule may not contemplate situations such as theirs, where a variable life insurance separate account funds both policies with a front-end sales load and policies with a CDSL.

15. Applicants submit that any variation in the offering price of their Single Premium Policies falls within the category of a "variation" in the "premium rate structure" or the "particular benefit afforded by the contract" which are specifically exempted by Rule 6e-2(b)(12)(ii). Moreover, Applicants assert that any such "variation" is reasonable, fair and not discriminatory to the interest of any holder of Single Premium Policies of the same class or series.

16. Applicants submit that the CDSL under the Single Premium Policy benefits the public and is consistent with the essential purpose of variable life insurance. Applicants represent that a single premium policy is less expensive to distribute and administer than a periodic payment policy. Elimination of the front-end charge permits either a reduction in the gross premium payment needed to purchase an equivalent initial death benefit or an increase in the initial amount of the death benefit. The Single Premium Policies have been designed so that the same amount of premium that would be paid under an otherwise comparable front-end loaded policy results in a greater initial face amount of insurance.

17. Applicants submit that a CDSL will generally provide higher surrender values than a front-end sales charge, since more money is at work from the start of the policy.

18. Applicants submit that the CDSL would clearly be permitted without exemptive relief if the Single Premium Policies were eligible to rely on Rule 6e-3(T), rather than Rule 6e-2, under the 1940 Act, and that the Commission has proposed amendments to Rule 6e-2 which, if adopted, would make specific exemptive relief unnecessary.²

B. Request for Exemptions Relating to Deduction of Cost of Insurance Charges From Account Value

1. Section 26(a)(2) and 27(c)(2) of the 1940 Act may be construed to prohibit John Hancock from deducting cost of insurance charges from Account value.³

² Investment Company Act Release No. 14421 (Mar. 15, 1985).

³ Section 26(a)(2) provides, in pertinent part, that no principal underwriter for or depositor of a registered unit investment trust shall sell any security of which the trust is the issuer unless the instrument pursuant to which the security is issued

Applicants request exemptions from those Sections and from Rule 6e-2(b)(13)(iii),⁴ to the extent necessary to permit deduction of these charges from Account value.

2. Applicants submit that Rule 6e-3(T) authorizes policies qualified to rely on that Rule to deduct cost of insurance charges from Account value, and that the Commission's proposed amendments to Rule 6e-2 would authorize similar deductions by the Single Premium Policies and the Annual Premium Policies.

3. Applicants submit that John Hancock's method of deducting cost of insurance charges is fair and reasonable.

C. Request for Exemptions Relating to Use of 1980 CSO Tables by the Annual Premium Policies

1. Rule 6e-2(b)(1) makes the definition of "sales load" in Rule 6e-2(c)(4) applicable to the Annual Premium Policies. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e-2(b)(13)(i) provides an exemption from 27(a)(1) to the extent that "sales load," as defined in Rule 6e-2(c)(4), does not exceed 9% of the payments to be made on a variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Tables. Rule 6e-2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and the assumed investment return specified in the policy.

2. Subsequent to the adoption of Rule 6e-2, the National Association of Insurance Commissioners adopted the

provides that no payment to the depositor or of the principal underwriter for such trust, or to any affiliated person of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself).

Section 27(c)(2) provides, in pertinent part, that it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the proceeds of all payments on such certificates (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having specified qualifications and are held by such trustee or custodian under an indenture or agreement containing specified provisions).

⁴ Among other things, Rule 6e-2(b)(13)(iii) provides an exemption from Sections 26(a)(2) and 27(c)(2), subject to certain conditions which Applicants submit that they satisfy.

1980 CSO Tables. Applicants request exemptions from Section 27(a)(1) and Rules 6e-2(b)(1), (b)(13)(i) and (c)(4), to the extent necessary to permit cost of insurance under the Annual Premium Policies to be calculated for purposes of testing compliance with the Rule based on the 1980 CSO Tables.

3. Applicants represent that state insurance laws require that John Hancock use 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the affected Annual Premium Policies, and that it is appropriate, therefore, that in determining what is deemed to be sales load under the Annual Premium Policies, the deduction for the cost of insurance be based upon the 1980 CSO Tables rather than the 1958 CSO Tables.

4. Applicants further represent that, for the most part, deduction for the cost of insurance based upon the 1980 CSO Tables will result in lower charges and higher policy values than if such deductions were based upon the 1958 CSO Tables. Moreover, Applicants assert that the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which will pertain to the Annual Premium Policies.

5. Applicants represent that for insureds at advanced ages, appropriate adjustments will be made in the sales charge structure to ensure that the 9% standard prescribed by Rule 6e-2(b)(13)(i) will be met over the expected lifetimes of such insureds, based on the 1980 CSO Tables.

Applicants' Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 22(d), 26(a)(2), 27(a)(1), 27(c)(1) and 27(c)(2) of the 1940 Act, and Rules 6e-2(b)(1), 6e-2(b)(12), 6e-2(b)(13), 6e-2(c)(4), and 22c-1 thereunder—to permit the deduction of a CDSL under the Single Premium Policies, the deduction of cost of insurance charges from Account values under the Single Premium Policies and the Annual Premium Policies, and the use of the 1980 CSO Tables in determining compliance of the Annual Premium Policies with the 1940 Act and the rules promulgated thereunder—meet the standards of Section 6(c) of the 1940 Act. In this regard, the Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22022 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19677; File No. 812-8528]

Lincoln Benefit Life Company, et al.

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lincoln Benefit Life Company ("Lincoln Benefit"), Lincoln Benefit Life Variable Annuity Account (the "Account") and Lincoln Benefit Financial Services, Inc. ("Lincoln Financial") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expenses risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on August 10, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Carol S. Watson, General Counsel, Lincoln Benefit Life Company, 134 South 13th Street, Lincoln, Nebraska 68505.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 772-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Lincoln Benefit, a stock life insurance company organized under the laws of Nebraska, is a wholly owned subsidiary of Allstate Life Insurance Company. Allstate Life Insurance Company is an Illinois corporation wholly owned indirectly by The Allstate Corporation. Approximately 80.1% of the common stock of The Allstate Corporation is indirectly owned by Sears, Roebuck & Co.

2. The Account, established by Lincoln Benefit on August 3, 1992 as a segregated asset account under Nebraska law, serves as a funding medium for certain flexible premium individual deferred variable annuity contracts (the "Contracts"). The application states that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33-66786), for the Account.

3. Purchase payments may be allocated to one or more subaccounts of the Account, as designated by the owner of a Contract. Each subaccount of the Account will invest in shares of a registered open-end management investment company.

4. Lincoln Financial, a wholly owned subsidiary of Lincoln Benefit, is the distributor of the Contracts. Lincoln Financial is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended. Applicants represent that Lincoln financial will also be a member of the National Association of Securities Dealers, Inc. prior to the offering and selling of any Contract.

5. The Contracts are available for retirement plans which qualify for federal tax advantages under the Internal Revenue Code and for those plans which do not qualify for advantageous treatment. The Contracts require a minimum initial premium payment of \$1,200. Additional premium payments must be in amounts of at least \$100.

6. If the owner of a Contract dies prior to the annuity date and the Contract is in force, Lincoln Benefit will, upon receipt of due proof of death, pay a death benefit. At a minimum, the death benefit is equal to the greater of: (a) All purchase payments less prior withdrawals, accumulated at 4% per

year prior to attained age 80 of the owner of the Contract, and at 0% per year thereafter (the "Floor Value"); or (b) the Contract value less applicable premium tax. If the Contract value on the seventh Contract anniversary is greater than the Floor Value, the Floor Value will be increased to the level of the Contract value. If this increase occurs, Floor Value for the eighth Contract year and for subsequent years will then be calculated using the increased value. The Contract owner may select the form of annuity from four annuity options described in the registration statement for the Account.

7. One transfer among subaccounts is permitted monthly without charge. For each transfer among subaccounts in excess of once monthly, a transfer fee of \$25 is assessed. Lincoln Benefit is currently waiving this fee.

8. Applicants impose an annual Contract maintenance charge of \$25 per Contract year. Applicants guarantee that this charge will not increase and state that the charge reimburses Lincoln Benefit for expenses incurred in maintaining the Contracts. This charge will be deducted on each Contract anniversary prior to the annuity date, but is not imposed during the annuity period. If a Contract is surrendered, the charge is assessed as of the surrender date without proration.

9. Lincoln Benefit deducts an administrative expense charge equal to an annual effective rate of .15% of the net asset of the subaccount. The application states that this charge will compensate Lincoln Benefit for administering the Contracts and the Account. This charge is assessed during both the accumulation and the annuity periods.

10. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed on certain surrenders or withdrawals of Contract value. No Sales Charge is applied on annuitization or on the payment of a death benefit unless the settlement option chosen is payment over a period certain of less than five years. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts.

11. Lincoln Benefit will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate

Lincoln Benefit for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risk, Lincoln Benefit will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Lincoln Benefit. If Lincoln Benefit realizes a gain from the charge for mortality and expense risks, the amount of such gain may be used in the discretion of Lincoln Benefit.

12. Applicants state that the mortality risk borne by Lincoln Benefit consists of: (a) Bearing the risk that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates; (b) waiving the Sales Charge upon the death of a Contract owner; and (c) providing a death benefit prior to the annuity date. Applicants state that the expense risk assumed by Lincoln Benefit is the risk that the costs of administering the Contracts and the Account will exceed amounts received by Lincoln Benefit through imposition of the Contract administration charge and the administrative expense charge.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Lincoln Benefit under the Contracts.

3. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by Lincoln Benefit is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information about similar industry practices, taking into consideration such factors as: current charge levels; charge level guarantees; benefits provided; and guaranteed annuity rates. Applicants represent that Lincoln Benefit will maintain at its home office, available to the Commission, a memorandum setting forth in detail the methodology used in determining that the level of risk charges is within the range of industry practice.

4. Applicants represent that Lincoln Benefit has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Lincoln Benefit and will be made available to the Commission.

5. Lincoln Benefit also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-21951 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19681; File No. 812-8486]

Providentmutual Life and Annuity Company of America, et al.

September 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or Commission).

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Providentmutual Life and Annuity Company of America ("PLACA"), Providentmutual Variable Annuity Separate Account (the "PLACA Account"), Provident Mutual Life Insurance Company of Philadelphia ("PMLIC"), Provident Mutual Variable Annuity Separate Account (the "PMLIC Account"), and PML Securities Company (together, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under certain variable annuity contracts described below (the "Contracts").

FILING DATE: The application was filed on July 2, 1993 and amended on August 27, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Providentmutual Life and Annuity Company of America, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, or Wendell M. Faria, Deputy Chief, on (202) 272-2060 Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. PLACA is a stock life insurance company chartered under Pennsylvania law in 1958 and authorized to transact life insurance and annuity business in the District of Columbia and all states other than New York and Maine. PLACA is a wholly owned subsidiary of PMLIC.

PMLIC is a mutual insurance company chartered under Pennsylvania law in 1865 and authorized to transact life and annuity business in all states and the District of Columbia.

PLACA is the depositor and sponsor of the PLACA Account, and PMLIC is the depositor and sponsor of the PMLIC Account.

2. The PLACA Account was established by PLACA as a separate investment account under Pennsylvania insurance law on May 9, 1991, as a funding medium for variable annuity contracts. The PMLIC Account was established by PMLIC as a separate investment account under Pennsylvania insurance law on October 19, 1992, as a funding vehicle for flexible premium variable annuity contracts.

3. PML Securities will serve as the distributor and principal underwriter for the Contracts. PML is a wholly owned indirect subsidiary of PMLIC, is registered with this Commission under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are individual flexible premium deferred variable annuity contracts. The Contracts may be purchased on a non-tax qualified basis ("Nonqualified Contracts") or they may be purchased and used in connection with retirement plans, including retirement programs described in Section 401(a) or Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or as individual retirement annuities that qualify for favorable federal income tax treatment under Section 408 of the Code ("Qualified Contracts"). The Contracts require a minimum initial premium payment of at least \$2,000. Subsequent premium payments must be at least \$100 for Nonqualified Contracts and \$50 for Qualified Contracts.

5. The PLACA and PMLIC Accounts will each have 16 subaccounts. The Subaccounts of each of the PLACA and PMLIC Accounts will invest exclusively in the shares of a designated investment

portfolio (each a "Portfolio", of one of the following investment companies registered with the Commission as series management companies under the Act: (1) the Market Street Fund, Inc. (the "Market Street Fund"); (2) the Variable Insurance Products Fund (the "VIP Fund"); (3) the Variable Insurance Products Fund II (the "VIP Fund II"); (4) the Scudder Variable Life Investment Fund (the "Scudder VLI Fund"); (5) the Quest for Value Accumulation Trust (the "Quest for Value Trust"); and (6) the Dreyfus Variable Investment Fund (the "Dreyfus Variable Fund") (collectively the "Funds").

6. The Contract owner can allocate premium payments to one or more Subaccounts, each of which will invest in a corresponding Portfolio of the Funds. The Contract owner can also allocate premium payments to the PLACA Guaranteed Account or the PMLIC Guaranteed Account, depending upon which company issues the Contract, and such payments will be credited with interest as provided for in the Contracts. The Guaranteed Account for each company is part of that company's general account.

7. In the event that an annuitant dies prior to the end of the sixth Contract Year, a death benefit is payable upon receipt of due proof of death as well as proof that the annuitant died prior to the maturity date.

8. An annual contract maintenance fee of \$30 will be deducted from the Contract account value on each Contract anniversary prior to and including the maturity date (and upon a full surrender or on the maturity date if other than a Contract anniversary) to compensate it for administrative services provided to Contract owners. This fee is guaranteed not to increase for the duration of the Contract and is only applicable prior to and including the maturity date.

9. A daily charge equal to an effective annual rate of .15% of the value of net assets in each Account will also be imposed by PLACA and PMLIC to compensate each of them for certain administrative services provided to Contract owners. This fee is guaranteed not to increase for the duration of the Contract and is only applicable prior to the maturity date.

10. A \$25 charge under the Contracts will be imposed for the thirteenth and each subsequent transfer request made by the Contract owner during a single Contract year prior to the maturity date. Transfers made pursuant to the dollar cost averaging program do not count toward the twelve transfers permitted each Contract year without imposition of the transfer charge. This charge is

guaranteed not to increase for the duration of the Contract.

11. Applicants represent that these administrative charges will be deducted in reliance on Rule 26a-1 under the Act and that each represents reimbursement only for administration costs expected to be incurred over the life of the Contract. PLACA and PMLIC neither anticipate nor intend to make any profit from the charges.

12. In order to permit investment of the entire premium payment (less any applicable premium taxes), neither PLACA nor PMLIC currently deducts sales charges at the time of investment. However, a contingent deferred sales charge of up to 6% of the amount withdrawn is imposed on certain full surrenders or partial withdrawals of Contract account value during the first six Contract years to cover expenses relating to the sales of the Contracts, including commissions to registered representatives and other promotional expenses. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of the premium payments.

During the first Contract year, any amounts surrendered or withdrawn are subject to the contingent deferred sales charge. After the first Contract year, the portion of the first and second withdrawals in a contract year equal to 10% or less of the Contract account value as of the beginning of the Contract year is not subject to the sales charge. Systematic withdrawals are also not subject to a contingent deferred sales charge, regardless of when such withdrawals are made. However, notwithstanding the rules ordinarily governing the imposition of the surrender charge, any other withdrawal in a year in which the systematic withdrawal plan is being utilized will be subject to a surrender charge.

13. Neither PLACA nor PMLIC anticipates that the contingent deferred sales charges will generate sufficient revenues to pay the cost of distributing the Contracts. If these charges are insufficient to cover PLACA's or PMLIC's expenses, the deficiency will be met from each company's general account assets, which may include amounts derived from the charge for mortality and expense risks discussed below.

14. A daily charge is imposed by each PLACA and PMLIC to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Account and only applies prior to and including the maturity date. Of that amount,

approximately .70% is attributable to mortality risk, and approximately .55% is attributable to expense risk. PLACA and PMLIC each guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover PLACA's or PMLIC's actual costs and assumed risks, the loss will fall on PLACA or PMLIC. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to either PLACA or PMLIC. PLACA and PMLIC each currently anticipates a profit from this charge.

15. The mortality risk borne by each of PLACA and PMLIC arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live.

16. The expense risk assumed by each of PLACA and PMLIC is the risk that PLACA's or PMLIC's actual administration costs will exceed the amount recovered through the Contract administrative charges.

17. PLACA and PMLIC each also incurs a risk in connection with the death benefit guarantee. Upon the annuitant's death before the end of the sixth Contract Year, PLACA or PMLIC will pay the greater of (a) the Contract account value, or (b) premium payments (net of withdrawals, including applicable surrender charges). Upon the annuitant's death after the end of the sixth Contract year but before the maturity date, PLACA or PMLIC will pay the greatest of (1) the Contract account value as of the end of the sixth Contract year less any subsequent partial withdrawals, (2) the Contract account value on the date of receipt of due proof of death, and (3) the premium payments (net of withdrawals, including any surrender charges). There is no extra charge for this guarantee.

18. PLACA will deduct the aggregate premium taxes paid on behalf of a particular Contract either (a) from premiums as they are received, or (b) from the Contract proceeds upon (i) a withdrawal from or full surrender of a Contract, or (ii) application of the proceeds to a payment option. Premium taxes currently range up to 3.5%.

Applicant's Legal Analysis and Conditions

1. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for

performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the Act. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts.

2. Applicants submit that each of PLACA and PMLIC is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount each of PLACA and PMLIC guarantees certain risks in the Contracts. The mortality and expense risk charge is a reasonable charge to compensate PLACA and PMLIC for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts, for the risk that the Contract account value will be less than the death benefit, and for the risk that administrative expenses will be greater than amounts derived from the Contract administrative charges.

3. PLACA and PMLIC each represents that the charge of 1.25% for mortality and expense risks assumed by PLACA and PMLIC is within the range of industry practice with respect to comparable annuity products. This representation is based upon PLACA's and PMLIC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. PLACA and PMLIC will each maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Applicants acknowledge that the proceeds of surrender charges may be

insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge.

5. Each of PLACA and PMLIC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the PLACA and PMLIC Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by each of PLACA and PMLIC at its administrative offices and will be available to the Commission.

6. Each of PLACA and PMLIC also represents that the PLACA and PMLIC Accounts will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

7. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-22020 Filed 9-8-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-25875]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 3, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 27, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southwestern Electric Power Company (70-8239)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, a public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rules 50 and 50(a)(5) thereunder.

SWEPCO proposes to issue and sell in one or more series, from time to time through December 31, 1994, first mortgage bonds ("New Bonds") in an aggregate principal amount up to \$125 million with maturities of not less than five nor more than forty years. SWEPCO estimates that the New Bonds will be issued at an interest rate between 4½% and 8½% depending on market conditions and maturity, and in no event will the interest rate on the New Bonds exceed 11%.

The New Bonds will be issued under SWEPCO's indenture dated February 1, 1940, as amended and supplemented ("Indenture") and secured by a first lien on substantially all of the properties now owned and hereafter acquired, except for properties specifically excepted from such liens.

The proceeds from the sale of the New Bonds will be used principally to repay outstanding short-term borrowings of SWEPCO. A portion of the proceeds from the sale of the New Bonds may also be used to redeem all or a portion of one or more series of SWEPCO's outstanding first mortgage bonds ("Old Bonds"). Any net proceeds not used for the repayment of outstanding short-term borrowings or for the redemption of the old Bonds will be used for other general corporate purposes, including

SWEPCO's ongoing general construction and maintenance program.

By order dated September 9, 1992 (HCAR No. 25624) ("Previous Order"), the Commission authorized SWEPCO to issue and sell first mortgage bonds in an aggregate principal amount of up to \$320 million in one or more series from time to time through December 31, 1994. As of August 6, 1993, under authority of the Previous Order, SWEPCO had issued and sold first mortgage bonds in an aggregate principal amount of \$230 million. The remaining \$90 million of first mortgage bonds authorized to be issued under the Previous Order may be issued in connection with refunding transactions, including the repayment of all or a portion of SWEPCO's outstanding \$50 million variable rate bank loan due June 15, 1997, and to repay outstanding short-term borrowing or for other general corporate purposes. The authority requested herein is in addition to the authority granted in the Previous Order.

SWEPCO requests authority to sell the New Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. SWEPCO also seeks authorization from the Commission to issue the New Bonds with terms which deviate from the provisions contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The New Bonds may include terms which (i) limit SWEPCO's ability to redeem or refund the New Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict SWEPCO's ability to pay dividends on its common stock.

SWEPCO also requests authorization to enter into negotiations with potential underwriters to set the terms and conditions of the New Bonds, subject to the receipt of an order granting this declaration. It may do so.

The Columbia Gas System, Inc., et al.
(70-8247)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company and debtor in possession under Chapter 11 of the United States Bankruptcy Code,¹ and its nonutility subsidiary company Columbia LNG

¹ Columbia and its wholly owned subsidiary, Columbia Gas Transmission Corporation, filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, *In re The Columbia Gas System, Inc. and Columbia Gas Trans. Corp.*, No. 91-803. Columbia represents that the authorization of the bankruptcy court is not required to effect this transaction.

Corporation ("Columbia LNG"), both of 20 Montchanin Road, Wilmington, Delaware 19807, have filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Columbia LNG owns a liquefied natural gas ("LNG") receiving terminal and regasification facility located at Cove Point, Maryland ("Facility") and an 87 mile pipeline extending from the Facility to Loudoun County, Virginia. The pipeline is currently being used for gas transportation, but the Facility has been inactive since 1980. Columbia LNG is planning to reactivate the Facility to provide peak shaving services to interested companies, including affiliated and nonaffiliated retail gas distribution companies.

Columbia has proposed that it accept deferral of principal and interest payments on long and short-term debt owned to Columbia by Columbia LNG. The amount deferred would be up to \$3.8 million for a five month period from September 30, 1993 to February 28, 1994.

Columbia also represents that if the deferral is authorized, Columbia LNG's current cash balance plus anticipated federal income tax benefits will permit Columbia LNG to fund, through February 28, 1994, maintenance expenses for the Facility, and expenses related to the implementation of Columbia LNG's new business plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22017 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19670; File No. 812-8470]

The Quest for Value Accumulation Trust, et al.

September 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Quest for Value Accumulation Trust (the "Trust"), Quest for Value Advisors ("Quest Advisors") and certain life insurance companies and their separate accounts investing now or in the future in the Trust (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act

and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of any current or future series of the Trust to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on June 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Quest for Value Accumulation Trust, One World Financial Center, New York, New York 10281 and Quest for Value Advisors, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272-2058 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts business trust on March 2, 1988. The Trust currently consists of five portfolios: (1) The Equity Portfolio; (2) the Small Cap Portfolio; (3) the Managed Portfolio; (4) the Bond Portfolio; and (5) the Money Market Portfolio. The Board of Trustees may establish additional series at any time, each with its own investment objective or objectives and policies.

2. Shares of the Trust are currently offered only to variable accounts of life insurance company affiliates of the Mutual Life Insurance Company of New

York ("MONY") to serve as an investment vehicle for variable annuity contracts issued by MONY. Shares of the Trust and any future series of the Trust ("Other Funds") also will be offered to separate accounts of insurance companies that are affiliated and unaffiliated with MONY (together with MONY, the "Participating Insurance Companies"). Such shares will serve as investment vehicles for various types of variable insurance contracts, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts ("Variable Contracts").

3. Quest Advisors is a subsidiary of Oppenheimer Capital, a general partnership, which is registered as an investment adviser. Oppenheimer Financial Corp., a holding company, owns a 33% interest in Oppenheimer Capital and Oppenheimer Capital, L.P., a Delaware limited partnership of which Oppenheimer Financial Corp. is the sole general partner, owns the remaining interest. Quest Advisors serves as the investment adviser to each series of the Trust ("Fund").

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the "Trust Account"), Rule 6e-2(b) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e-2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e-2(b)(15) are available only where the management investment company underlying the Trust Account ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same company or any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated

life insurance company is referred to herein as "mixed funding."

2. In addition, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e-3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e-3(T) is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by rule 6e-3(T) are available only where the Trust Account's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e-3(T) permits mixed funding while not permitting shared funding.

4. Applicants therefore request that the Commission, under its authority in section 6(c) of the 1940 Act, grant relief from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, for themselves and for variable life insurance separate accounts of Participating Life Insurance Companies, and the principal underwriters and depositors of such separate accounts, to the extent necessary to permit mixed funding and shared funding.

5. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) and (2). Rule 6e-2(b)(15) (i) and (ii) and rule 6e-3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. The relief

provided by rules 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by rules 6e-2(b)(15)(ii) and 6e-3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) is participating in the management or administration of the fund.

6. Applicants state that the partial relief granted in rules 6e-2(b)(15) and 6e-3(b)(15) from the requirements of section 9, in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that rules 6e-2 and 6e-3(T) recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants submit that there is no regulatory reason to apply the provisions of section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Fund or any Other Fund as the funding medium for variable contracts.

7. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemptions from sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain circumstances.

Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract holders in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make, or refrain from making, certain investments which would result in changes in the subclassification or

investment objectives of such companies or to approve or disapprove any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules.

Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract holders' voting instructions if the contract holders initiate any change in such company's investment policies or principal underwriter or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

8. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

9. Applicants state further that, under Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii), the right of the insurance company to disregard the voting instructions of its contract holders does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract holders. The potential for disagreement is limited by the requirements in Rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

10. Applicants submit that mixed funding and shared funding should benefit variable contract holders by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for a greater amount of assets available for investment by the Funds or Other Funds, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new portfolios more feasible; and (3) encouraging more

insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund and Other Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular participating insurer or type of insurance product.

11. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees of the Trust shall consist of persons who are not "interested persons" of the Trust as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board of Trustees; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of Trustees will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract holders of all Separate Accounts investing in any Fund or Other Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of a Fund or Other Fund are being managed; (v) a difference in voting instructions given by variable annuity contract holders and variable life insurance contract holders;

or (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract holders.

3. Participating Insurance Companies and the investment adviser to the Trust will report any potential or existing conflicts to the Board of Trustees of the Trust. Participating Insurance Companies will be responsible for assisting the Board of Trustees of the Trust in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board of Trustees of the Trust whenever contract holder voting instructions are disregarded. These responsibilities will be contractual obligations of all Participating Insurance Companies investing in a Fund or Other Fund under their agreements governing participation therein, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract holders.

4. If a majority of the Board of Trustees of the Trust, or a majority of the disinterested trustees, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees) take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the separate accounts from a Fund or Other Fund and reinvesting such assets in a different investment medium (including another fund, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contract holders and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract holders, life insurance contract holders, or variable contract holders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract holders the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract holder voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may

be required, at the election of the Fund or Other Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in a Fund or Other Fund and these responsibilities will be carried out with a view only to the interests of the contract holders.

For the purposes of this condition (4), a majority of the disinterested members of the Board of Trustees of the Trust shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or the investment adviser be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract holders materially affected by the irreconcilable material conflict.

5. The determination by the Board of Trustees of the Trust of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract holders so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract holders. Accordingly, Participating Insurance Companies will vote shares of each Fund and Other Fund held in their separate accounts in a manner consistent with timely voting instructions received from contract holders. Each Participating Insurance Company will vote shares of each Fund and Other Fund held in its separate accounts for which no timely voting instructions from contract holders are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Each Participating Insurance Company shall be responsible for assuring that each of their separate accounts participating in a Fund or Other Fund calculates voting privileges in a manner consistent with the other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate

Accounts investing in a Fund or Other Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund or Other Fund.

7. Each Fund and Other Fund will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund and Other Fund shall disclose in its Prospectus that (1) its shares may be offered to separate accounts that fund both annuity and life insurance contracts of affiliated and unaffiliated Participating Insurance Companies, (2) because of differences of tax treatment or other considerations, the interests of various contract holders participating in it might at some time be in conflict, and (3) the Board of Trustees will monitor the Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of Trustees of the Trust regarding potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent rule 6e-2 and rule 6e-3(T) are amended, or rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested, then each Fund and Other Fund, and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 and Rule 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and in particular the Trust will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in this section) as well as with sections 16(a) and, if and when

applicable, 16(b). Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and/or the investment adviser, at least annually, shall submit to the Board of Trustees of the Trust such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board of Trustees of the Trust when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in each Fund or Other Fund.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Department of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-21898 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19678; 811-3314]

Security Action Fund; Notice of Application

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Security Action Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 8, 1993 and amended on August 31, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 700 Harrison Street, Topeka, Kansas 66636-0001.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a corporation under the laws of Kansas. On November 6, 1981, applicant registered under the Act as an investment company. On December 2, 1981, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on June 30, 1982. Applicant's shares were beneficially owned through Destiny Plans IIA (formerly, Security Action Plans). Destiny Plans IIA is a periodic payment plan organized as a unit investment trust. (The certificate holders of Destiny Plans IIA are "Planholders.")

2. On December 30, 1992, applicant's board of directors approved an agreement and plan of reorganization made with Destiny II, a separate series of Fidelity Destiny Portfolios (the "Agreement"). Destiny II shares are beneficially owned through a Fidelity periodic payment plan. On February 23, 1993, applicant furnished proxy materials to its shareholders. At a meeting held on March 23, 1993,

applicant's shareholders approved the Agreement.

3. On March 26, 1993, applicant transferred all of its assets to Destiny II in exchange for shares of Destiny II with an equivalent net asset value. On the date of the reorganization, applicant had 35,372,591 shares outstanding, having an aggregate net asset value of \$343,907,268 and a per share net asset value of \$9.72. Each shareholder of applicant, including Destiny Plans IIA, became the owner of Destiny II shares having an aggregate net asset value equal to the aggregate net asset value of applicant's shares held by the shareholder. Consequently, the Planholders became beneficial owners of shares of Destiny II through their ownership of Destiny Plans IIA certificates.

4. Expenses incurred in connection with the reorganization, including legal fees, auditing fees, postage, and printing costs, totaled approximately \$117,748.17. All expenses were allocated to Security Management Company, applicant's investment adviser, and Fidelity Management and Research Company, Destiny II's investment adviser.

5. There are not securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant has filed a certificate of dissolution on March 29, 1993 with the Secretary of State of Kansas and was dissolved.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-21953 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19673; 812-6506]

Shearson Lehman Daily Dividend Inc.; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Lehman Daily Dividend Inc., Shearson Government

and Agencies Inc., Shearson Lehman Brothers Managed Municipals Fund Inc., Shearson Lehman Brothers of New York Municipals Fund Inc., Shearson Lehman Brothers California Municipals Fund Inc., Shearson Lehman Brothers Massachusetts Municipals Fund, Shearson Lehman Brothers Arizona Municipals Fund Inc., Shearson Lehman Brothers New Jersey Municipals Fund Inc., Shearson Lehman Brothers Florida Municipals Fund, Shearson Lehman Brothers Precious Metals and Minerals Fund Inc., American Express® New York Municipals Money Market Fund, American Express® California Municipals Money Market Fund, and Managed High Income Portfolio Inc. (the "Funds") and Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to amend a previous order that exempted Judge James J. Crisona from the definition of "interested person" as defined in section 2(a)(19) of the Act to the extent he may be an "interested person" of the Funds because he is the father of Cynthia Crisona, an employee of the Funds' underwriter, Shearson Lehman Brothers Inc. ("Shearson"). The present order is necessary because of the sale of the assets of Shearson to Primerica Corporation and Primerica's subsidiary, Smith Barney.

FILING DATE: The application was filed on July 29, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, the Funds, Two World Trade Center, New York, New York

10048; Smith Barney, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. On March 12, 1993, Shearson entered into an asset purchase agreement with Primerica Corporation and Primerica's indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson and the SLB Asset Management Divisions of Shearson (the "Transaction"). Upon the closing of the Transaction, Smith Barney will become the sponsor and distributor or underwriter of the Funds, which have formerly been sponsored and distributed or underwritten by Shearson. In addition, the investment advisory services which had formerly been provided to the Funds by Shearson or its subsidiaries will be provided by Smith Barney or one of its investment advisory affiliates.

2. Since July 1, 1976 and until his retirement on December 31, 1992, Judge James J. Crisona was counsel to a New York law firm. From January 1, 1959 to July 1, 1976, Judge Crisona was a Justice of the Supreme Court of the State of New York. He has been a director or trustee of the Funds since their respective dates of inception. Cynthia Crisona is Judge Crisona's daughter and has been an employee of Shearson since the consummation of certain transactions relating to the combination of the business of Loeb Rhoades Hornblower & Co. and Shearson Hayden Stone Inc. (the "Combination"). For one year prior to the Combination, Ms. Crisona was employed as a registered representative of Loeb Rhoades Hornblower & Co. and remained employed in that capacity by Shearson immediately following the Combination. Prior to the Combination, Judge Crisona was a non-interested director of one of the Funds, and it was anticipated that he also would serve as a non-interested person on the board of directors of another Fund. However, as a result of the Combination and the continued

employment of Shearson of Ms. Crisona, Judge Crisona was treated as an interested person of those investment companies. For this reason, applicants, except Smith Barney, sought and received an order under section 6(c) of the Act exempting Judge Crisona from the definition of "interested person" as defined in section 2(a)(19) of the Act (the "Prior Order").¹ The Prior Order exempted Judge Crisona to the extent he otherwise would have been considered an interested person of the Funds because he is the father of Ms. Crisona.

3. Applicants anticipate that Judge Crisona will continue to serve as a director, trustee, or general partner of the Funds after the Transaction, at which time all of the Funds will be sponsored, advised, and underwritten by Smith Barney or its subsidiaries. Also, Ms. Crisona will be employed in her present capacity by Smith Barney.

4. At the request of Shearson and Smith Barney, the Commission's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the Commission take any enforcement action against them if the Funds operate under the terms of the Prior Order until the earlier of (a) the date the Prior Order is renewed by the Commission pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.² Accordingly, applicants in the present application request that the relief granted by the Prior Order be extended to Smith Barney or any of its subsidiaries or affiliates, or any future Funds as to which Smith Barney or any of its subsidiaries or affiliates may act as the investment adviser or principal underwriter.

Applicants' Legal Analysis

1. Section 2(a)(19) of the Act defines an "interested person" of an investment adviser or a principal underwriter to include any member of the immediate family of any natural person who is an "affiliated person" of such investment adviser or principal underwriter. The section defines member of the immediate family to include any parent. Furthermore, section 2(a)(19) defines an "interested person" of an investment company to include any interested person of any investment adviser or principal underwriter for such company. Section 2(a)(3) of the Act defines "affiliated person" of any

person as, among other things, "any officer, director, partner, co-partner, or employee of such other person."

2. Because Ms. Crisona will be an employee of Smith Barney after the Transaction, she will be an affiliated person of Smith Barney. Judge Crisona, absent the renewal and extension of the Prior Order may be, at the conclusion of the Transaction, an "interested person" of the Funds, Smith Barney, or any of its subsidiaries, because he is the father of an employee of the Funds' underwriter—Smith Barney.

3. Ms. Crisona has been employed for several years in positions completely independent of her father and is financially independent. Ms. Crisona is over 40 years of age, has been married, maintains a separate household from Judge Crisona, and is financially independent of Judge Crisona. Judge Crisona has received no direct or indirect benefit from Ms. Crisona's employment by Shearson nor is it expected that he will receive any direct or indirect benefit from Ms. Crisona's employment by Smith Barney after the Transaction. In addition, Ms. Crisona will be one of approximately 3,000 registered representatives employed by Smith Barney, and she receives no additional compensation benefits or preferential or other special treatment by virtue of her relationship to Judge Crisona.

4. The function of the provisions of the Act with respect to "interested persons" is to supply an independent check on the management of investment companies and to provide a means for the representation of shareholder interests in investment company affairs. The designation of an individual as an "interested person" implies the existence of a question of actual or potential conflict of interest that would impede the individual's capacity to perform those functions. The Funds' respective boards of directors or trustees or individual general partners have determined in good faith that Judge Crisona is in a position to continue to act independently on behalf of the Funds and their respective shareholders without any possible impairment arising out of his daughter's employment with a Smith Barney affiliate.

Applicants' Condition

As a condition of the requested relief, Judge Crisona will undertake not to vote, nor participate in any deliberations, as a director or trustee of any of the Funds with respect to allocation of brokerage to Smith Barney, or any affiliate thereof, as long as Ms. Crisona is employed as a registered representative of Smith Barney.

¹ Investment Company Act Release Nos. 11671 (Mar. 6, 1981) (notice) and 11716 (Apr. 3, 1981) (Order).

² Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-21899 Filed 9-8-93; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-19674; 812-8508]

**Shearson Lehman Daily Dividend Inc.;
Notice of Application**

September 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Lehman Daily Dividend Inc., Shearson Government and Agencies Inc., Shearson Lehman Brothers Managed Municipals Fund Inc., Shearson Lehman Brothers New York Municipals Fund Inc., Shearson Lehman Brothefs California Municipals Fund Inc., Shearson Lehman Brothers Massachusetts Municipals Fund, Shearson Lehman Brothers Arizona Municipals Fund Inc., Shearson Lehman Brothers New Jersey Municipals Fund Inc., Shearson Lehman Brothers Florida Municipals Fund, Shearson Lehman Brothers Precious Metals and Minerals Fund Inc., Shearson Lehman Brothers Adjustable Rate Government Income Fund, American Express® New York Municipals Money Market Fund, American Express® California Municipals Money Market Fund, the Advisors Fund L.P., the Trust for Trak Investments, Zenix Income Fund Inc., Managed Municipals Portfolio Inc., Managed Municipals Portfolio II Inc., and Managed High Income Portfolio Inc. (the "Funds"), the Robinson-Humphrey Company, Inc. ("Robinson-Humphrey"), and Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to amend a previous order that exempted Martin Brody from the definition of "interested person" as defined in section 2(a)(19) of the Act to the extent he may be an "interested person" of the Funds because he is the father of Renee Levow, an employee of an affiliate of the Funds' underwriter, Shearson Lehman Brothers Inc. ("Shearson"). The present order is necessary because of the sale of the assets of Shearson to Primerica

Corporation and Primerica's subsidiary, Smith Barney.

FILING DATE: The application was filed on July 29, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, the Funds, Two World Trade Center, New York, New York 10048; Robinson-Humphrey, 3333 Peachtree Road, NE., Atlanta, Georgia 30326; Smith Barney, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. On March 12, 1993, Shearson entered into an asset purchase agreement with Primerica Corporation and Primerica's indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson and the SLB Asset Management Divisions of Shearson (the "Transaction"). Upon the closing of the Transaction, Smith Barney will become the sponsor and distributor or underwriter of the Funds, which have formerly been sponsored and distributed or underwritten by Shearson. In addition, the investment advisory services which had formerly been provided to the Funds by Shearson

or its subsidiaries will be provided by Smith Barney or one of its investment advisory affiliates.

2. Robinson-Humphrey is a wholly-owned subsidiary of Shearson and is principally an investment banking and securities brokerage firm. Pursuant to the Transaction, Robinson-Humphrey will be sold to and become a wholly-owned subsidiary of Smith Barney.

3. Martin Brody is vice chairman of the board of directors of Restaurant Associates Industries, Inc., and Renee Levow is his daughter. Mr. Brody originally was elected as a director, trustee, or made a general partner of each of the Funds at their respective organizational meetings. Until April 1, 1983, he was deemed to be a non-interested person of the Funds and their advisers and principal underwriters. However, as a result of Mrs. Levow's employment as a registered representative with Robinson-Humphrey on or around April 1, 1983, Mr. Brody may have been characterized as an interested person of the Funds. For this reason, applicants, except Smith Barney, sought and received an order under section 6(c) of the Act exempting Mr. Brody from the definition of "interested person" as defined in section 2(a)(19) of the Act (the "Prior Order").¹ The Prior Order exempted Mr. Brody to the extent he otherwise would have been considered an interested person of the Funds because he is the father of Mrs. Levow.

4. Applicants anticipate that Mr. Brody will continue to serve as a director, trustee, or general partner of the Funds after the Transaction, at which time all of the Funds will be sponsored, advised, and underwritten by Smith Barney or its subsidiaries. Also, Mrs. Levow will remain employed in her present capacity by Robinson-Humphrey.

5. At the request of Shearson and Smith Barney, the Commission's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the Commission take any enforcement action against them if the Funds operate under the terms of the Prior Order until the earlier of (a) the date the Prior Order is renewed by the Commission pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.² Accordingly, applicants in the present application

¹ Investment Company Act Release Nos. 13316 (June 10, 1983) (notice) and 13382 (July 13, 1983) (order).

² Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

request that the relief granted by the Prior Order be extended to Smith Barney or any of its subsidiaries or affiliates, or any future Funds to which Smith Barney or any of its subsidiaries or affiliates may act as the investment adviser or principal underwriter.

Applicants' Legal Analysis

1. Section 2(a)(19) of the Act defines an "interested person" of an investment adviser or a principal underwriter to include any member of the immediate family of any natural person who is an "affiliated person" of such investment adviser or principal underwriter. The section defines member of the immediate family to include any parent. Furthermore, section 2(a)(19) defines an "interested person" of an investment company to include any interested person of any investment adviser or principal underwriter for such company.

2. Section 2(a)(3) of the Act defines "affiliated person" of any person as, among other things, any officer, director, partner, co-partner, or employee of such other person. Accordingly, Mrs. Levow is an affiliated person of Robinson-Humphrey because she is an employee of Robinson-Humphrey. "Affiliated person" is further defined to include any person directly or indirectly controlling, controlled by or under common control with, such other person. Therefore, Robinson-Humphrey will be an affiliated person of Smith Barney after the Transaction since Robinson-Humphrey will be a wholly-owned subsidiary of Smith Barney.

3. Although applicants' relief is characterized as a request for relief from section 2(a)(19), the provision of the Act that may be violated in the absence of relief is section 10(a), which requires that at least 40% of the directors of a registered investment company be non-interested persons. Section 10(a) is intended to provide for an independent check on management and for the representation of the shareholders' interests in investment company affairs. Because of this purpose, in interpreting section 2(a)(19), the Division of Investment Management generally treats related companies that are under common ownership and control as a single entity for the purpose of section 2(a)(19).³ Accordingly, if Robinson-Humphrey and Smith Barney are treated as a single entity, Mr. Brody would be considered to be an interested person of

the Funds because his daughter would be considered an affiliated person of the Funds' underwriter—Smith Barney.

4. Mrs. Levow has been employed for several years in positions completely independent of her father. She is over 40 years of age, is married, maintains a separate household, and is financially independent of her father. Mr. Brody has received no direct or indirect benefit from Mrs. Levow's employment by Robinson-Humphrey, and applicants do not expect that he will receive any direct or indirect benefit from Mrs. Levow's employment by Smith Barney or one of its affiliates after the Transaction. In addition, Mrs. Levow will be one of approximately 650 registered representatives employed by Robinson-Humphrey, and she receives no additional compensation benefits or preferential or other special treatment by virtue of her relationship to Mr. Brody.

5. The function of the provisions of the Act with respect to "interested persons" is to supply an independent check on the management of investment companies and to provide a means for the representation of shareholder interests in investment company affairs. The designation of an individual as an "interested person" implies the existence of a question of actual or potential conflict of interest that would impede the individual's capacity to perform those functions. The Funds' respective boards of directors or trustees or individual general partners have determined in good faith that Mr. Brody is in a position to continue to act independently on behalf of the Funds and their respective shareholders without any possible impairment arising out of his daughter's employment with a Smith Barney affiliate.

Applicants' Condition

As a condition of the requested relief, Mr. Brody will undertake not to vote, nor participate in any deliberations, as a director, trustee, or general partner of any of the Funds with respect to allocation of brokerage to Smith Barney, or any affiliate thereof, as long as Mrs. Levow is employed as a registered representative of Smith Barney or one of its subsidiaries or affiliates.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-21900 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Ref. No. IC-19675; 812-8538]

Transamerica Occidental Life Insurance Company, et al.

September 1, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Transamerica Occidental Life Insurance Company ("Company"), Transamerica Separate Account VA-2L (the "Variable Account"), Transamerica Financial Resources, Inc. ("TFR") and Dreyfus Service Corporation ("Dreyfus").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain flexible purchase payment multi-funded deferred individual annuity contracts (the "Contracts").

FILING DATE: The application was filed on August 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Transamerica Applicants, c/o James W. Dederer, Esq., Transamerica Occidental Life Insurance Company, 1150 South Olive, Los Angeles, CA 90015. Dreyfus Service Corporation, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272-2058 or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

³ See, e.g., *Certain Persons Not Deemed Interested Persons; Definition of Regular Broker or Dealer*, Investment Company Act Release No. 13920 (May 2, 1984) (proposal to amend rule 2a-5 and renumber it as rule 2a-19).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated under the laws of California in 1906. It is a wholly-owned subsidiary of Transamerica Insurance Corporation of California, which is in turn a wholly-owned subsidiary of Transamerica Corporation.

2. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account is divided into sub-accounts that invest in shares of the Dreyfus Life and Annuity Index Fund, Inc. or one or more of the portfolios of the Dreyfus Variable Investment Fund. In the future, the Variable Account will invest in the Dreyfus Socially Responsible Growth Fund, Inc. In addition, other portfolios or funds managed or distributed by Dreyfus or an affiliate may be made available.

3. Dreyfus and TFR will serve as the distributors and principal underwriters of the Contracts.

4. The Contracts are flexible purchase payment multi-funded deferred individual annuity contracts which can be purchased on a non-tax qualified basis or used to fund rollovers to individual retirement annuities qualifying for favorable tax treatment under section 408(b) of the Internal Revenue Code of 1986. The initial purchase payment for a Contract is \$5,000 and additional payments of at least \$500 may be made at any time before the annuity date. Initially, payments may be allocated to one or more sub-accounts of the Variable Account. The Company anticipates that, in the future, payments may be allocated to the sub-accounts of the Variable Account, one or more Guarantee Periods of the Fixed Account (if and when made available), or to a combination of these investment accounts. Amounts allocated to the Fixed Account will be subject to a market value adjustment under certain circumstances.

5. The Contract offers a death benefit. Prior to the annuity date, the death benefit proceeds for each Contract are equal to the greatest of (a) the Contract Owner's account value (plus or minus any market value adjustment applicable to the Fixed Account), (b) the sum of all purchase payments less withdrawals and any premium taxes or, (c) the Contract Owner's account value after any market value adjustment on the

most recent seven year certificate anniversary preceding the date of death adjusted for any payments and withdrawals since that seven year anniversary.

6. Subject to certain restrictions, Contract Owners may transfer all or part of their interest in a sub-account to another sub-account of the Variable Account or to the Fixed Account (if and when available). During the accumulation phase of the Contracts, transfers in excess of six per year may be subject to a transfer fee equal to the lesser of 2% of the amount transferred or \$10. No transfer fee applies after the annuity date.

7. The Company will deduct an annual account fee for each Contract equal to the lesser of (a) 2% of a Contract Owner's account value or (b) \$30. The fee may be increased but is guaranteed not to exceed an annual amount of \$60. After the annuity date an annual fee of \$30 will be deducted in equal installments from each annuity payment.

8. The Company will also deduct a daily administrative charge from the assets of each sub-account of the Variable Account currently at an effective annual rate of 0.15% of the average net assets of the Variable Account. This charge may be increased but will not exceed 0.25%.

9. The Company reserves the right to impose an annual fee not to exceed \$25 for administrative expenses associated with processing monthly withdrawals under a Contract pursuant to a systematic withdrawal option offered under the Contract.

10. Applicants represent that the Company does not anticipate any profit from the charges described in paragraphs 7-9 above and that the Company will deduct the administrative charges in reliance upon and in compliance with Rule 26a-1 under the 1940 Act.

11. A contingent deferred sales charge of up to 6% of the amount withdrawn will be imposed on certain partial withdrawals from or surrender of a Contract Owner's account. The percentage of the charge varies according to the number of years between the year in which a payment was credited to the Contract and the Contract year in which the withdrawal is made. The charge is equal to 6% until the second certificate year after receipt of payment has been completed, 5% until 4 years are completed, 4% for the next two years, 2% after 6 complete years and 0% after 7 complete years. The amount of any withdrawal will be deemed to come first from purchase payments on a first in/first out basis

until all purchase payments have been withdrawn. The Company guarantees that the aggregate contingent deferred sales charge will never exceed 6% of the total purchase payments. After the second Contract year, up to 10% of purchase payments held less than seven Contract years may be withdrawn without a charge. Also, the contingent deferred sales charge will not be applied to death benefits, withdrawals under the Contract's systematic withdrawal or automatic payment options, and upon certain annuities.

12. Premium taxes relating to a particular Contract will be deducted from premiums, upon receipt of purchase payments, withdrawal, surrender, payment of death benefits, or annuitization. No charges are currently made for federal, state, or local taxes other than premium taxes. However, the Company may deduct such taxes from the Fixed Account and the Variable Account in the future. The Applicants' acknowledge that the relief granted by rule 26a-2 under the 1940 Act does not apply to taxes other than premium taxes.

13. The Company will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Variable Account and the Contracts. The charge is set at an annual maximum rate of 1.25% of the net assets in the Variable Account. Of that amount, approximately 0.65% is estimated to be attributable to mortality risks, and approximately 0.60% is estimated to be attributable to expense risks. The Company currently anticipates a profit from this charge. The mortality risk borne by the Company arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. The Company also assumes a risk in connection with the payment of death benefits. The expense risk assumed by the Company is the risk that actual administrative costs will exceed the amount recovered through the various administrative charges described above.

Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act pursuant to section 6(c) to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charge under the Contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any deposition thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. The Company also represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other Contract options. The Company will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

4. Applicants acknowledge that the proceeds from the contingent deferred sales load may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing

arrangements will benefit the Variable Account and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

5. The Company represents that the Variable Account will invest only in underlying management investment companies which undertake, in the event such company adopts any plan under rule 12b-1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under the Rule 12b-1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21901 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before October 12, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for

review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer

Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205-6629.

OMB Reviewer

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: License Application, Personal History and Qualification of Management

Form No.: SBA Form 415, 415A

Frequency: On Occasion

Description of Respondents: Applicants for Small Business Investment Company Licenses

Annual Responses: 80

Annual Burden: 3,280

Dated: September 2, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-21882 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the *Federal Register*. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance officer

Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th

Floor, Washington, DC 20416,
Telephone: (202) 205-6629.

OMB Reviewer

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Survey of Commercialization Activities of SBIR Awardees
Form No.: N/A

Frequency: On Occasion

Description of Respondents: SBIR

program participants
Annual Responses: 700
Annual Burden: 84

Dated: August 3, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-21875 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments properly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer

Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416,
Telephone: (202) 205-6629.

OMB Reviewer

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Governor's Request for Disaster Declaration

Form No.: N/A

Frequency: On Occasion

Description of Respondents: States Requesting a Presidential Disaster Declaration.

Annual Responses: 50
Annual Burden: 1,000.

Dated: August 3, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-21876 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2662; Amendment #6]

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency, dated August 26 and 27, 1993, to include Cook, Massac, Pope, and Pulaski Counties in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on April 13, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: DuPage, Gallatin, Hardin, Saline, and Will in Illinois; Ballard, Livingston, and McCracken in Kentucky; and Lake County in Indiana.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury numbers are 793200 for Illinois; 801200 for Kentucky; and 803100 for Indiana.

The termination date for filing applications for economic injury is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 1, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-21954 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2664; Amendment #3]

Minnesota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective August 18, 1993, to include the counties of

Freeborn, Kittson, Marshall, Mower, Otter Tail, and Roseau in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing. This declaration is also amended to extend the deadline for filing applications for physical damage.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Beltrami, Lake of The Woods, and Todd in the State of Minnesota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 26, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-21880 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2670; Amendment #4]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 26, 1993 to include Divide and Williams Counties in the State of North Dakota as a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: McKenzie County in North Dakota, and Richland, Roosevelt, and Sheridan Counties in Montana.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The termination date for filing applications for economic injury is April 26, 1994.

The economic injury numbers are 795500 for North Dakota and 803200 for Montana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1993.

Bernard Kulik,
Assistant Administrator for Disaster Assistance.

[FR Doc. 93-21955 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2676]

Pennsylvania, and Contiguous Counties in New Jersey; Declaration of Disaster Loan Area

Bucks County and the contiguous counties of Lehigh, Montgomery, Northampton, and Philadelphia in Pennsylvania, and Burlington, Hunterdon, Mercer, and Warren Counties in New Jersey constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred on August 16 and 17, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 29, 1993 and for economic injury until the close of business on May 31, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 267606 for Pennsylvania and 267706 for New Jersey. For economic injury the numbers are 801400 for Pennsylvania and 801500 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 30, 1993.

Erskine B. Bowles,
Administrator.

[FR Doc. 93-21957 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2668; Amendment #4]

South Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 20, 1993 to include Gregory County in the State of South Dakota as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 6, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Tripp, South Dakota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The termination date for filing applications for economic injury is April 19, 1994.

The economic injury number for South Dakota is 793800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 27, 1993.

Alfred E. Judd,
Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-21879 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #8013]

Texas; Declaration of Disaster Loan Area

Aransas, Brazoria, Calhoun, Cameron, and Galveston Counties and the contiguous counties of Chambers, Fort Bend, Harris, Hidalgo, Jackson, Matagorda, Refugio, San Patricio, Victoria, Wharton, and Willacy in the State of Texas constitute an economic injury disaster area as a result of flooding from December 1991 through March 1992. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 31, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. The

interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 30, 1993.

Erskine B. Bowles,
Administrator.

[FR Doc. 93-21956 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2660; Amendment #5]

Wisconsin; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 20 and 25, 1993 to include Menominee and Shawano Counties in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning on June 7, 1993 and continuing through August 25, 1993. This declaration is further amended to extend the deadline for filing applications for physical damage.

In addition, applications for economic injury loans for small businesses located in the contiguous county of Oconto, Wisconsin may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 26, 1993.

Alfred E. Judd,
Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-21881 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

[License #03/03-0146]

James River Capital Associates, L.P.; License Surrender

Notice is hereby given that James River Capital Associates, L.P. ("James River"), a Virginia limited partnership, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). James River was licensed by the Small

Business Administration on May 15, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on July 30, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 31, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93-21878 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

Newark District Advisory Council; Public Meeting

The U.S. Small Business Administration Newark District Advisory Council will hold a public meeting at 9:30 a.m. on Friday, October 1, 1993, at the U.S. Small Business Administration, 60 Park Place, 4th Floor, Newark, New Jersey, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645-3580.

Dated: September 2, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-21877 Filed 9-8-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice No. 1859]

Shipping Coordinating Committee; Subcommittee on Standards of Training and Watchkeeping; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on October 14, 1993, in room 3442 in the Nassif Building, 400 7th Street SW., Washington, DC 20590. The purpose of the meeting is to review the actions taken by the first intersessional meeting of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) working group on the comprehensive review of the International Convention on Standards of Training, Certification and

Watchkeeping for Seafarers, 1978 (STCW). Items on the agenda for the twenty-fifth session of STW scheduled for January 17-21, 1994, in London, will also be reviewed.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G-MVP-4), room 1210, 2100 Second Street SW., Washington, DC 20493-0001 or by calling: (202) 267-0229.

Dated: August 27, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93-21895 Filed 9-8-93; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 93-17]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, September 29, 1993, from 8:30 a.m. to 5 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street SW. in Washington, DC. This will be the eighteenth meeting of the COMSTAC. The meeting will cover such issues as the status of the DOD Infrastructure Grants Program, progress report on the NASA Facilities Study, report on the USAF Range Standardization and Automation project, as well as reports from the COMSTAC working groups.

The meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366-5770.

Dated: September 2, 1993.

Linda H. Strine,

Executive Director, Commercial Space Transportation Advisory Committee.

[FR Doc. 93-22029 Filed 9-8-93; 8:45 am]

BILLING CODE 4010-02-P

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Wittman Regional Airport, Oshkosh, Wisconsin

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Winnebago County for Wittman Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 and agency regulations are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Wittman Regional Airport under agency regulations in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 14, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 18, 1993. The public comment period ends October 18, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725-4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Wittman Regional Airport are in compliance with applicable requirements of part 150, effective August 18, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 14, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The

Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Winnebago County submitted to the FAA on December 29, 1992, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise Compatibility Study from April 1985 to December 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Winnebago County. The specific maps under consideration are the 1992 existing Noise Exposure Map and the 1997 future Noise Exposure Map. The FAA has determined that these maps for Wittman Regional Airport are in compliance with applicable requirements. This determination is effective on August 18, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the

provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for Wittman Regional Airport, also effective on August 18, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 14, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,
Minneapolis Airports District Office, room
102, 6020 28th Avenue South,
Minneapolis, MN 55450.
Wittman Regional Airport, Airport
Administration, 525 West 20th Avenue,
Oshkosh, Wisconsin 54901.
Winnebago County Court House, County
Clerks Office, 415 Jackson Street, Oshkosh,
Wisconsin 54901.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Minneapolis, Minnesota, August 18, 1993.

Franklin D. Benson,
Manager, Minneapolis Airports District
Office, FAA Great Lakes Region.

[FR Doc. 93-21973 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-93-40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 29, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 1, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26006

Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 47.69(b)

Description of Relief Sought: To extend Exemption No. 5125 which allows operation of aircraft outside the United States for demonstration, testing, selling and marketing of aircraft, using a Dealer's Aircraft Registration Certificate.

Docket No.: 27381

Petitioner: Northwest Airlines
Sections of the FAR Affected: 14 CFR 108.17(a)(4)

Description of Relief Sought: To allow Northwest Airlines, Inc. and all certificate holders now operating X-ray systems for the inspection of carry-on or checked articles, relief from the requirement to provide each operator with an individual dosimeter.

Docket No.: 27402

Petitioner: Atlantic Coast Airlines
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441(A)(1)(B)(1), and 121 appendix F

Description of Relief Sought: To allow Atlantic Coast Airlines to transition into a Single Visit Recurrent Training (SVRT) or Single Visit Training Program (SVTP), and eventually into the Advances Qualification Program (AQP) as described in AC 120-54.

Docket No.: 27432

Petitioner: Dormier Luftfahrt GmbH
Sections of the FAR Affected: 14 CFR 25.562(c)(5)

Description of Relief Sought: To allow the petitioner to temporarily operate the Dormier 328 aircraft with front row passenger seats that exceed the maximum Head Injury Criterion requirements of 1000 units.

Docket No.: 18114

Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 121.547 and 121.583

Description of Relief Sought/Disposition: To permit Federal Express to carry reporters, photographers, or journalists aboard its aircraft without complying with the passenger carrying requirements of part 121. *Grant, August 24, 1993, Exemption No. 26001*

Docket No.: 26898

Petitioner: America West Airlines
Sections of the FAR Affected: 14 CFR 121.343(c)

Description of Relief Sought/Disposition: To allow the petitioner to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an FAA approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. *Grant, August 18, 1993, Exemption No. 5593C*

Docket No.: 26898

Petitioner: Ryan International Airlines
Sections of the FAR Affected: 14 CFR 121.343(c)

Description of Relief Sought/Disposition: To allow the petitioner to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an FAA approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. *Grant, August 18, 1993, Exemption No. 5593D*

Docket No.: 26898

Petitioner: Zantop International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.343(c)

Description of Relief Sought/Disposition: To allow the petitioner to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an

FAA approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. *Grant, August 27, 1993, Exemption No. 5593E*

Docket No.: 27140

Petitioner: Hi Line Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought/Disposition: To permit the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5715*

Docket No.: 27148

Petitioner: Heliflight, Inc.
Sections of the FAR Affected: 14 CFR 141.27

Description of Relief Sought/Disposition: To allow the petitioner to reapply for a provisional pilot school certificate without waiting at least 180 days after the expiration date of its current provisional certificate. *Denial, August 26, 1993, Exemption No. 5730*

Docket No.: 27152

Petitioner: Reforestation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5716*

Docket No.: 27174

Petitioner: Summit Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 20, 1993, Exemption No. 5723*

Docket No.: 27186

Petitioner: Mr. B.J. Schram
Sections of the FAR Affected: 14 CFR 103.1

Description of Relief Sought: To allow a 370-pound single seat, vertical takeoff helicopter with a fuel capacity of 12 gallons to operate as an ultralight vehicle. *Withdrawn, August 23, 1993*

Docket No.: 27194

Petitioner: Agrotors Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought/

Disposition: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 20, 1993, Exemption No. 5722*

Docket No.: 27202

Petitioner: Skydive Arizona, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a)

Description of Relief Sought/

Disposition: To allow non-student, foreign skydivers to participate in Skydive Arizona, Inc. sponsored events held at its facilities without having to comply with certain parachute equipment and packing requirements. *Grant, August 20, 1993, Exemption No. 5725*

Docket No.: 27220

Petitioner: Mountain Rotors, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought/

Disposition: To allow the petitioner to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 20, 1993, Exemption No. 5724*

Docket No.: 27246

Petitioner: Deutsche Lufthansa AG

Sections of the FAR Affected: 14 CFR 129.18

Description of Relief Sought/

Disposition: To permit the petitioner to operate its aircraft to San Juan, Puerto Rico, without being equipped with a TCAS II traffic alert and collision avoidance system (TCAS II). *Grant, August 23, 1993, Exemption No. 5728*

Docket No.: 27251

Petitioner: American Bonanza Society/Air Safety Foundation

Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3)

Description of Relief Sought:

To allow American Bonanza Society/Air Safety Foundation (ABS/ASF) instructors to provide recurrent flight training and simulated instrument flight training in Beech Baron and Travel Air type aircraft, equipped with a functioning throw-over control wheel, for the purpose of meeting regency of experience requirements contained in §§ 61.56 (a), (b) and (f) and 61.57 (e) (1) and (2) of the FAR. *Grant, August 30, 1993, Exemption No. 5733*

Docket No.: 27254

Petitioner: Andrews University

Sections of the FAR Affected: 14 CFR 141 appendixes A, C, D, and H

Description of Relief Sought: To allow the petitioner to train its students to a performance standard in lieu of meeting minimum flight time requirements and to allow 20 of the required 40 hours of solo cross country flight time be pilot-in-command time, in which the student would be permitted to carry another pilot (not a flight instructor), assigned by the school to perform specific flight crew duties, and/or another person, who is not a pilot, to be carried on board the aircraft during a solo cross country training flight. *Partial Grant, August 23, 1993, Exemption No. 5729*

Docket No.: 27281

Petitioner: Airways, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow pilots employed by Airways, Inc. to remove and install aircraft seats as required for a particular flight. *Grant, August 26, 1993, Exemption No. 5732*

Docket No.: 27293

Petitioner: Darby Aviation

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought/

Disposition: To allow pilots employed by Darby Aviation to remove and install aircraft seats as required for a particular flight. *Grant, August 18, 1993, Exemption No. 5726*

Docket No.: 27295

Petitioner: Monument Valley Air Service

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow pilots employed by Monument Valley Air Service to remove and install aircraft seats as required for a particular flight. *Grant, August 18, 1993, Exemption No. 5727*

Docket No.: 27330

Petitioner: Crow Executive Air, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow pilots employed by Crow Executive Air, Inc. to remove and install aircraft seats as required for a particular flight. *Grant, August 26, 1993, Exemption No. 5731*

[FR Doc. 93-21968 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 93-64; Notice 1]

Receipt of Petition for Determination that Nonconforming 1987 Jaguar XJ6 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1987 Jaguar XJ6 passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1987 Jaguar XJ6 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 12, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

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 shall 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 eligibility 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*.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1987 Jaguar XJ6 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1987 Jaguar XJ6 that Jaguar Cars Ltd. manufactured for importation into and sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it has carefully compared the non-U.S.-certified 1987 Jaguar XJ6 with its U.S.-certified counterpart, and found that they are substantially similar with respect to most applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the non-U.S. certified 1987 Jaguar XJ6 is identical to its U.S.-certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays:

- (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;
- (b) Installation of a seat belt warning lamp;
- (c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment:

- (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;
- (b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;
- (c) Installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Operated Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch in the retractor for that belt; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams in the doors.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1988 Jaguar XJ6 must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway

Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the *Federal Register* pursuant to the authority indicated below.

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 ad 501.8.

Issued on: September 1, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-21870 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-50-M

[Docket No. 93-63; Notice 1]

Receipt of Petition for Determination That Nonconforming 1991 BMW 518i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 BMW 518i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 BMW 518i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 12, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

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 shall 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 eligibility 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.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1991 BMW 518i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 BMW 525i. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1991 BMW 525i, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 518i is substantially similar to the 525i, and differs mainly in engine size and "minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort

options." The petitioner further surmised that the 518i's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1991 model 518i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1991 model 525i that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 518i is identical to the certified 1991 model 525i with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*:

- (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;
- (b) Installation of a seat belt warning lamp;
- (c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*:

- (a) Installation of U.S.-model headlamp assemblies which incorporated sealed beam headlamps and front sidemarkers;
- (b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;
- (c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the 1991 model 518i is equipped with a passive restraint system, consisting of a driver side airbag, knee bolster, and control unit, and that those components have identical part numbers to the ones that are found on the 1991 model 525i.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 518i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

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: September 1, 1993.
William A. Boehly,
Associate Administrator for Enforcement.
 [FR Doc. 93-21871 Filed 9-8-93; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 93-71]

Country of Origin Marking for Eritrea

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Eritrea, following a referendum on independence, announced on April 27, 1993, its independence from Ethiopia. After this announcement, the United States recognized Eritrea as an independent country. This document notifies the public of the name and the English spelling for this country that are to be used for country of origin marking on products of Eritrea imported into the United States. It also grants a grace period to permit the continued importation of merchandise marked "Ethiopia."

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Office of Regulations and Rulings (202-482-7040).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Customs has authority pursuant to 19 U.S.C. 1304 to determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and to require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

On April 27, 1993, the United States recognized Eritrea as an independent country. Accordingly, products of Eritrea are subject to marking with the English name of the independent country from which they originate. The United States Department of State has

indicated that the English names and the correct spellings of this new independent country are:

Long form name	Short form name
(No current long form)	Eritrea.

Customs recognizes that manufacturers and importers may need time to adjust to this change and that an abrupt change in the marking requirements could cause undue hardship. Therefore, goods made in Eritrea will be accepted as properly marked if they are marked with either "Ethiopia"; or the new appropriate country designation: "Eritrea". Either name will be acceptable until May 1, 1994. All products of Eritrea imported into the U.S. on or after May 1, 1994, will be required to be marked "Eritrea".

Dated: September 1, 1993.

Karen J. Hiatt,

Deputy Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 93-22005 Filed 9-8-93; 8:45 am]

BILLING CODE 4920-02-P

Fiscal Services

[Dept. Circ. 570, 1993 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Correction; ACSTAR INSURANCE COMPANY

The phone number for ACSTAR INSURANCE COMPANY was listed in error in the Treasury Department Circular 570, July 1, 1993. The phone number is hereby corrected to read (203) 224-2000.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1993 Revision, at 58 FR 35779 to reflect this correction.

Questions concerning this Notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874-6507.

Dated: September 2, 1993.

Charles F. Schwann III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93-21930 Filed 9-8-93; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Freedom Support Act—Secondary School Initiative For Short Term Exchange Projects

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth between the ages of 15 and 18½ years of age with the twelve Newly Independent States (NIS) of the former Soviet Union. These exchanges represent part of the activities of the Secondary School Student Exchange Initiative as included in the Freedom Support Act of 1992 and are subject to the availability of funding for the Fiscal Year 1994 program.

This is a request for proposals for short term thematic exchanges. Requests for proposals in support of other programs under the aegis of the Freedom Support Act are being published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington DC on Friday, November 5, 1993. Faxed documents will not be accepted, nor will documents postmarked on November 5 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Subject to the availability of funds, grants will be awarded after March 15, 1994 for exchanges to begin after April 15, 1994.

ADDRESSES: The original, 4 fully tabbed copies and 10 copies (Tabs A—D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A.—Secondary School Initiative Short-Term Exchange Projects, Office of Grants Management, E/XE, 301 4th Street SW, Rm 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact David Dallas, NIS Secondary School Division, E/PY, room 357, (202) 619-6299; FAX (202) 619-5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for

preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview—Grant funding is intended to promote the exchange of secondary school students, from 15 to 18½ years of age, between the U.S. and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Four different program designs will be utilized for this program which include: (A) An academic year program, (B) A semester exchange program (C) A school-to-school linkage program, and (D) A short-term exchange program. This RFP describes the short-term program. Other RFP's will be published soliciting proposals for the other three programs.

Guidelines for Short-Term Exchanges

Grants will be awarded to support programs for a three to six week duration. Programs should have a thematic focus. Eligible foci may include, but are not limited to: the arts (theater, dance, music, fine arts, literature, folklore, and film/video); language and cultural; science, technology, and mathematics; civic education; leadership training; conservation and the environment; journalism; historic preservation; social, political, and economic issues; agriculture; business administration/management (including enterprise promotion); and homestay programs under the title, "the American Community Experience," which should include local programming in such areas as state and municipal government, regional culture, etc.

One-for-one reciprocity is not a requirement, but is encouraged. A minimum of 10 students are to be exchanged with each grant. Proposals should provide detailed information on the activities in both the U.S. and the partner country. Proposals should provide written evidence that the U.S. organization has the commitment of a reliable counterpart organization in the

partner country willing and able to engage in the proposed activities. Homestays are desirable. The minimum stay in country for all programs is three weeks.

Special consideration will be given to proposals that address the needs and interests of USIS posts and/or NIS ministries for projects on specific themes or with specific organizations or groups. A list of these will be provided with the application packet.

Projects requesting support for tours of performing arts groups or sports teams are eligible only if the primary purpose of the program is mutual education and there is extensive structured interaction between international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition will not be eligible. Outdoor camping projects must have a thematic focus. They must include a plan for measuring performance/achievement of the participants.

Unless there are extenuating circumstances, programs should maintain a ratio of not more than one adult per every ten youth. The exchange program may also include excursions, cultural activities, and opportunities to experience community life. It is very desirable for each group of NIS students to have a segment of their program in Washington, DC or a state capital.

Grantee organizations are responsible for developing a sustainable partnership with an organization or agency of government in the NIS; designing the components of the exchange; managing all travel arrangements, logistics, insurance coverage, passports, visas, etc.; training of adult escorts; disbursing and accounting for grant funds.

Budget

The organization must submit a comprehensive line item budget. Costs for US and NIS students should be listed separately. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122 and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis

for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Education and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria: Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, rigor and relevance to Agency mission and adherence to the criteria and conditions described above.
2. *Reasonable, Feasible, and Flexible Objectives:* Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.
4. *Value to U.S.-Partner Country Relations:* Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).
5. *Cost Effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.
6. *Institutional Capacity:* Proposed personnel and institutional resources

should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability: Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan: Proposals should provide a plan for evaluation by the grantee institution.

10. Selection Process: Proposals should provide a specific plan to ensure a selection based on merit and should include detailed criteria for selecting all participants.

11. Geographic Diversity: The Agency will seek to provide geographic diversity within the NIS and the U.S. through this program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award

commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-21874 Filed 9-8-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 173

Thursday, September 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 14, 1993 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 16, 1993 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Americans for Robertson—Final Repayment Determination.

Advisory Opinion 1993-12: Phillip Martin on behalf of the Mississippi Band of Choctaw Indians.

Final Ex Parte Communications Rules, with Statement of Basis and Purpose.

Fiscal Year 1995 Budget Request.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer,
Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93-22215 Filed 9-7-93; 3:13 pm]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, September 15, 1993.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Keystone Coal Mining Corp.*, Docket No. PENN 91-1480-R, etc. (Issues include whether the judge correctly found that the Secretary of Labor's respirable dust spot inspection program was procedurally invalid because the Secretary failed to engage in rulemaking before implementing the program.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Keystone Coal Mining Corp.*, Docket No. PENN 91-1480-R, etc. (See Oral Argument Listing.)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION:
Jean Ellen (202) 653-5629/((202) 708-

9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93-22146 Filed 9-7-93; 11:54 am]

BILLING CODE 6735-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9 a.m., September 20, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 16, 1993, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of FY 1994-95 budgets.

4. Status of action on audit recommendations.

5. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Review of Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of ADP Operations Management of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION:
Tom Trabucco, Director, Office of External Affairs, (202) 942-1640.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93-22180 Filed 9-7-93; 2:00 pm]

BILLING CODE 6760-01-M

REGISTRATION
RECORDS
SECTION

Thursday
September 9, 1993

Part II

**Department of
Health and Human
Services**

Social Security Administration

20 CFR Part 416
Supplemental Security Income;
Determining Disability for a Child Under
Age 18; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AD58

Supplemental Security Income; Determining Disability for a Child Under Age 16

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise the disability evaluation and determination process for Supplemental Security Income (SSI) claims of children based on disability. The revisions amend the rules we published on February 11, 1991 (56 FR 5534), subsequent to the February 20, 1990, U.S. Supreme Court ruling in *Sullivan v. Zebley* 493 U.S. 521, 110 S.Ct. 885 (1990). In *Zebley*, the Court invalidated the use of a medical "listings-only" approach to the denial of children's claims for SSI benefits based on disability, and required the use of an individualized functional assessment of children whose impairments did not meet or equal the severity of listed medical impairments. As did our prior final rules, the changes made in these rules incorporate into the disability determination process for these children concepts and criteria reflecting current knowledge in the field of childhood disability and functioning.

DATES: This rule is effective September 9, 1993. The rules in §§ 416.924-416.924e, 416.926a, and 416.994a will no longer be effective September 9, 1997 unless extended by the Secretary, or revised and promulgated again.

FOR FURTHER INFORMATION CONTACT: Cassandra Bond, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965-1794.

SUPPLEMENTARY INFORMATION:**History**

Provisions for SSI benefits for disabled children were part of the Social Security Amendments of 1972 establishing the SSI program, which became effective January 1, 1974. The Social Security Act (the Act) currently provides the same definition of disability for adults under the title XVI SSI program as it does for workers, widows or widowers of workers, and children of workers under the title II disability program.

The Act, at section 1614(a)(3)(A), defines disability for adults as the inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." The Act further provides, at section 1614(a)(3)(B), that an adult will be considered disabled, "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *."

The definition of disability for children is contained in a parenthetical statement at the end of section 1614(a)(3)(A). The Act provides that a child under the age of 18 will be considered disabled for purposes of eligibility for SSI, "if he suffers from any medically determinable physical or mental impairment of comparable severity" to that which would make an adult disabled.

Under our regulations, the decision process we use to determine if an adult is disabled is different in concept and application from the process we used for children prior to the Supreme Court's decision in *Zebley*. Regulations §§ 404.1520 and 416.920 set out a five-step sequential evaluation process for determining disability in adults, which considers in turn:

1. Whether the adult is doing substantial gainful activity;
2. Whether, in the absence of substantial gainful activity, his or her medically determinable impairment or combination of impairments is severe;
3. Whether, if the impairment(s) is severe, it meets or is medically equivalent in severity to an impairment listed in appendix 1 of subpart P of the regulations in 20 CFR part 404 (hereinafter, "the listings");
4. Whether, in the presence of a severe impairment or combination of impairments, the individual retains the capacity to do his or her past relevant work, considering his or her residual functional capacity; and
5. Whether, if past relevant work is precluded, the individual retains the capacity to do any other work which exists in the national economy, considering the individual's residual functional capacity, age, education, and work experience.

Sullivan v. Zebley

On February 20, 1990, the Supreme Court, in *Zebley*, decided that the "listings-only" approach SSA had used prior to *Zebley* to deny claims for SSI benefits based on childhood disability did not carry out the "comparable severity" standard in title XVI of the Act. This was because the listings were set at a level of severity stricter than the level at which an adult worker can be found disabled, and the approach did not provide for an assessment of a child's overall functional impairment.

The Supreme Court held that children claiming SSI benefits based on disability are entitled to an "individualized functional assessment" as part of the disability determination process, comparable to adults who have impairments that do not meet or equal the listings and who receive such an individualized assessment. The Court found that, whereas adults who are not found to be disabled under the listings still have the opportunity to show that they are disabled at the last step of the sequential evaluation process, no similar opportunity existed for children under the regulations we used prior to *Zebley*. The Court concluded that, although the vocational analysis we use in claims filed by adults is inapplicable to claims filed by children for SSI benefits, this does not mean that a functional analysis cannot be applied to children's claims. As a result of the *Zebley* decision, we revised the rules we used to evaluate childhood disability claims. We published the revised rules as a final rule with a request for comments on February 11, 1991 (56 FR 5534).

Final Rule With Request for Comments

We first published these childhood disability rules in the *Federal Register* on February 11, 1991 (56 FR 5534). In this preamble, we will call the rules published on February 11, 1991, our "prior rules." Although our prior rules were published as a final rule, we asked for comments concerning the rules from members of the public. Interested persons, organizations, and groups were invited to submit comments pertaining to the prior rules within a period of 60 days from the date of publication of the rules. In response to a number of requests from the public asking us to extend the comment period, and in light of the unusual significance of the rules, we subsequently extended the comment period to July 8, 1991, for a total of 147 days (56 FR 21075, May 7, 1991). After carefully considering the comments contained in the 44 letters we received regarding the prior rules, we are

publishing these final rules. The specific revisions we have made in the final rules in response to the public comments are explained in the following sections of this preamble.

Explanation of the Final Rules

These final rules revise our prior rules for deciding disability in childhood cases under SSI that had been in effect since February 11, 1991. As we explain below in the summary of specific provisions, we have reorganized the rules into what we believe is a clearer and more logical presentation. The reorganization does not result in any substantive changes in policy or application of the prior rules. Also explained below are a number of other changes we made in response to the public comments. None of the changes or revisions made to the prior rules in these final rules results in any way in a change to, or revision of, the substantive standard for determining children's disability.

In accordance with the Supreme Court's ruling in *Zebley*, these final rules, like our prior rules, provide that each child whose impairment(s) does not medically meet or equal a listing will receive an individualized assessment of his or her functioning. As in the prior rules, the final rules provide three steps at which a child's functioning will be considered. First, they require consideration of each child's functioning at the second step of the sequential evaluation process to determine whether the child has any impairment or combination of impairments that is "severe." Second, they provide for the consideration of functioning at the listings equivalence step. Third, they ensure that disability evaluations of children seeking SSI benefits will include a process for evaluating the limitations caused by a child's impairment or combination of impairments that is not based solely on listing-level severity. Thus, they provide an additional step beyond the listings step at which we may determine that children with severe impairments that do not meet or (medically or functionally) equal a listing are disabled based on an individualized assessment of their functioning. As a result, the sequential evaluation process in these final rules, comparable to that for adults, is still:

1. Whether the child is engaging in substantial gainful activity;
2. Whether the child's impairment or combination of impairments is severe;
3. Whether the child has a medically determinable impairment(s) that meets or medically equals in severity a listing in appendix 1 of subpart P of part 404

or, if not, whether the functional consequences of the child's impairment or combination of impairments functionally equal a listing; and

4. Whether the child's severe impairment(s) so limits the child's ability to function in an age-appropriate manner that the limitations are comparable in severity to those that would disable an adult.

It is still possible under this process for children to have impairments equal in severity to a listed impairment based solely upon medical findings. Because our longstanding concepts of meeting or equaling a listing based upon medical findings permit us to find many claimants disabled, we have retained them in the final rules. We have also retained the expanded and clarified rules for making determinations of equivalence that were set out in § 416.926a of the prior rules.

These final rules also retain § 416.994a from the prior rules, to be used in determining whether childhood disability continues. Section 416.994a is modeled after the rules we use to determine if adults continue to be disabled and takes into account the final rules in §§ 416.924 and 416.924a through 416.924e.

Changes to Other Rules Related to These Rules

In the prior rules we made revisions to other rules in subpart I that are relevant to children (e.g., § 416.913). As we explained in the preamble to our prior rules, these revisions added language to the rules so that they would explicitly refer to children. We have retained those revisions in these final rules.

Summary of Changes

The most important change in these new rules is a reorganization of the rules themselves. Our intent in the reorganization is to be responsive to a variety of concerns expressed by many commenters who thought that such basic rules as the need to consider evidence from all relevant sources, the guidance about children's functioning in § 416.924c of the prior rules (final § 416.924b), and the need to consider the "other factors" in § 416.924d of the prior rules (final § 416.924c) applied only to the individualized functional assessment. This reorganization does not represent any change in policy or procedure in the evaluation of children's disability claims from the prior rules. Rather, it reflects both our original intent and actual current practice. At the same time, it is responsive to the concerns of many of the commenters and clarifies the

regulatory provisions to reflect our intent more accurately.

In the organization of the prior rules, the rule on individualized functional assessment immediately followed the definition of disability and the sequential evaluation process for children. This organization suggested to many commenters that the subsequent rules on age, functioning in children, and other factors were applicable only to individualized functional assessments at the fourth step of the new sequential evaluation process. Because the comments indicated to us that we had not correctly conveyed our intent in the prior rules, we decided to reorganize and revise them to clarify our policy.

In the reorganization, § 416.924 is still "How we determine disability for children." Final § 416.924a is now "Age as a factor of evaluation in childhood disability"; final § 416.924b is now "Functioning in children"; and final § 416.924c is now "Other factors we will consider." Final § 416.924d is now "Individualized functional assessment for children"; and final § 416.924e is still "Guidelines for determining disability using the individualized functional assessment." As we explain below, we have also moved paragraphs from former sections to different sections for clarity; however, all of the sections from prior §§ 416.924 through 416.924e are in final §§ 416.924 through 416.924e, only redesignated.

To clarify that the guidance on age, functioning, and other factors is relevant to determinations made at steps 2, 3, and 4 of the sequential evaluation process, the rules that are appropriate to all steps of the sequential evaluation process for children are now together in final §§ 416.924 through 416.924c. We moved § 416.924a(c) of the prior rules, "Terms used to describe functioning," into final § 416.924b, "Functioning in children," where it more appropriately belongs, and revised it so that it no longer states that it applies only to the individualized functional assessment. We redesignated § 416.924a(b) of the prior rules, "Basic considerations," as § 416.924(g), thus moving it into the section, "How we determine disability in children." Our intent in moving this paragraph into § 416.924 is to state clearly that at each step of the sequence, we will consider all relevant evidence, and that this evidence can come from both medical and nonmedical sources.

Because we moved all of the paragraphs of § 416.924a of the prior rules into other sections, we redesignated the rules that followed, so that the sections on age, functioning, and other factors are now designated as

final §§ 416.924a, 416.924b, and 416.924c, respectively. These rules follow the rules on the sequential evaluation process and basic considerations.

We combined § 416.924a(a) of the prior rules (the general paragraph on the individualized functional assessment) and § 416.924c(a)(2) through (g) of the prior rules (the rules describing the domains of development and functioning and the specific behaviors) into final § 416.924d. In this way, all of the basic rules regarding the individualized functional assessment are together in the same section and are followed by the guidelines for using the individualized functional assessment in § 416.924e. We also deleted some references to the individualized functional assessment in final § 416.924b, "Functioning in children," and final § 416.924c, "Other factors we will consider," to make it clear that these rules apply when we assess functioning at steps 2, 3, and 4 of the sequential evaluation process.

Other changes made in response to public comments are explained in the discussion that follows, and in greater detail in the responses to comments. We made a few minor technical changes, which have no substantive effect on the rules, and which we also explain below.

In the preamble to the prior rules, we explained (in General Note on Style) why the regulations were written in the first and second persons, addressed to the children who claim to be disabled, rather than to their parents or other appropriate adults. Although we advised the public to comment on the terminology if anyone found it problematic, no one did so. Therefore, we have continued in these rules to address the children who are claiming benefits.

Section 416.902—General Definitions and Terms for This Subpart

We have added to this section, without change, definitions of the terms "adult" and "child" which were included in the prior rules published on February 11, 1991 (56 FR 5534). A subsequent final regulation pertaining to consultative examinations, published on August 1, 1991 (56 FR 36932), which also amended § 416.902, inadvertently omitted these two definitions.

Section 416.903—Who Makes Disability and Blindness Determinations; Section 416.1015—Making Disability Determinations

We have added a new paragraph (f) to § 416.903 and a new paragraph (e) to § 416.1015 to reflect section 5036 of Public Law (Pub. L.) 101-508, the

Omnibus Budget Reconciliation Act of 1990, which is codified in the Act at section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)). This law requires that we make reasonable efforts to ensure that a qualified pediatrician or other appropriate medical specialist evaluates the claims of children filing for SSI benefits based on disability. This law, which was enacted November 5, 1990, and became effective with respect to determinations made 6 or more months after this date, was preceded by an initiative the Secretary of Health and Human Services announced in November of 1989, which directed that in adjudicating and reviewing all SSI childhood disability claims, we were to include pediatricians among the medical personnel we use to evaluate these cases. The Secretary also directed that other specialists would continue to be involved in appropriate childhood claims. Since the Secretary's initiative in 1989, we have made extensive efforts to recruit, hire, and train pediatricians to evaluate childhood disability claims in the State agencies in each State.

A commenter on the prior rules pointed out that we did not have a provision implementing section 5036 of Public Law 101-508. Therefore, we are making this addition to the rules not only to reflect the statutory provision, but also in response to that comment.

Adding new paragraph (e) to § 416.1015 required us to redesignate former paragraphs (e), (f), and (g) of this section, which are otherwise unchanged, as paragraphs (f), (g), and (h).

Section 416.913—Medical Evidence of Your Impairment

Paragraph (c)(3) was added to § 416.913 in the prior final rules published on February 11, 1991, "Supplemental Security Income; Determining Disability for a Child Under Age 18," 56 FR at 5553. However, the paragraph was inadvertently removed by final rules published on August 1, 1991, "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR at 36964. Therefore, in these final rules we are restoring paragraph (c)(3) to § 416.913 and revising it as explained in the following paragraphs.

For reasons we explain in the public comments section of the preamble, we revised § 416.913(c)(3) in response to a comment by deleting the phrase, "and to perform age-appropriate daily activities." We also revised the cross-reference. We also revised § 416.913(e)(2) in these final rules in response to a comment. We replaced the phrase, "non-medical sources," with the

phrase, "people who know you." We also added the phrase, "and other caregivers," after "parents." In a technical change, paragraph (e)(3) was revised to change the punctuation marks after "assistants" and "naturopaths" from semi-colons to commas.

Final paragraph (c) is now titled, "Statements about what you can still do," which refers to what we formerly called "medical assessments." We changed the term in final rules published on August 1, 1991, "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR at 36964.

Section 416.916—If You Fail To Submit Medical and Other Evidence

In a technical correction, we are restoring to § 416.916 a sentence which states that failure to cooperate in obtaining evidence will result in our making a decision based on the available information. This sentence previously appeared in § 416.916 but was inadvertently deleted upon codification in the Code of Federal Regulations (CFR) of the final childhood disability rules published on February 11, 1991 (56 FR at 5554).

Section 416.924—How We Determine Disability for Children

This section provides the three-part definition of disability for children and describes the sequential evaluation process we use in children's claims. In the definition of comparable severity, paragraph (a), we made three changes. In response to comments, we deleted the clause, "or if you are an infant from birth to the attainment of age 1, be reasonably expected to substantially reduce * * *," for reasons we explain in the public comments section of the preamble. In response to a comment, we added to paragraph (a)(2) the phrase "community activities" to represent such things as after-school activities, church activities, and participation in the girl scouts and boy scouts. We also added in paragraph (a)(3) a cross-reference to final § 416.924b(b)(4), which discusses "work-related activities," as the term is used to describe functioning in older adolescents. None of these changes is a change in policy; as we explain in the public comments section of the preamble, the revisions are merely clarifications of the prior rules.

The policies in final § 416.924 (b) through (f) are unchanged from the prior rules. However, we did make minor text modifications in response to comments; the revisions are only for purposes of clarity and completeness. In final § 416.924(b), "Steps in evaluating

disability," we added after the third sentence, the following statement: "We will also evaluate any limitations in your ability to function that result from your symptoms, including pain (see § 416.929)." We also deleted the clause, "and consider it together with all other relevant evidence," in the next-to-last sentence of the paragraph. We made this technical change because the clause was redundant. Also, by stating that we would consider the individualized functional assessment—which already considers all of the relevant evidence—"together with all other relevant evidence," the sentence in the prior rule could have suggested that the individualized functional assessment does something other than consider all relevant evidence. In fact, our instructions make it clear that adjudicators will consider all relevant evidence when they perform the individualized functional assessment. In addition, in that same sentence, we made another technical correction, changing the phrase "to determine" to "and determine" in order to make clear that the disability determination is based upon the individualized functional assessment.

In final § 416.924(d), "You must have a severe impairment(s)," we have provided a more detailed definition of an impairment that is not severe in response to public comments. The final rule now states that a child's impairment(s) is not severe if it is a slight abnormality or a combination of abnormalities that causes no more than a minimal limitation in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. We took this language, in part, from Social Security Ruling 85-28, "Titles II and XVI: Medical Impairments That Are Not Severe". Therefore, the addition of this language is not a change, but a restatement of our policy interpretation. We also added the phrase "independently, appropriately, and effectively" from the regulatory definition of disability for children in order to describe the characteristics of a child's functioning that are salient to our evaluation. We explain our reasons for these revisions and our responses to all of the comments regarding step 2 in the public comments section of the preamble.

In final § 416.924(f), "Your impairment(s) must be of comparable severity to an impairment(s) that would disable an adult," we explain that at the fourth step of the sequential evaluation process we must determine whether a child who has a severe impairment(s) that does not meet or equal the severity

of a listed impairment has an impairment of comparable severity to one that would disable an adult. We made identical changes in paragraphs (f)(1)(i) and (f)(2) of this section to emphasize what that determination means. In paragraph (f)(1)(i), we changed the statement, "so limits your physical or mental ability to function in an age-appropriate manner that your limitations are comparable to those which would disable an adult," to "substantially reduces your physical or mental ability to function independently, appropriately, and effectively in an age-appropriate manner * * *." In paragraph (f)(2), we made the same change to the statement, "is comparable in severity to an impairment(s) that would make an adult disabled." In addition, we made a technical change in paragraph (f)(2). We rephrased the opening of the paragraph to say, "If we find that your impairment(s) does not substantially reduce * * *." We made this change in order to state more precisely the nature of the determination being described and to parallel the concluding language in the paragraph, " * * * or if your impairment(s) does not meet * * *."

Final § 416.924(g), "Basic considerations," was § 416.924a(b) in the prior rules. We deleted the phrase, "using an individualized functional assessment," from the final rule to clarify that when we assess functioning at steps 2, 3, and 4 of the childhood sequence, the assessment of functioning is to be based on all relevant evidence in the case record from both medical and nonmedical sources. We also reaffirm the important principle that evaluation of the evidence should result in an assessment of the child's functioning on a longitudinal basis—that is, over time. As we have explained above, we redesigned the paragraph as § 416.924(g) because it provides rules that are applicable to all steps of the sequential evaluation process.

Section 416.924a—Age as a Factor of Evaluation in Childhood Disability

Final § 416.924(a), "General," provides general guidance concerning the significance of a child's age in the adjudication of a childhood disability claim. As part of our response to the comments about our policies on determining whether an impairment(s) is "severe," we revised the second sentence of the paragraph by adding a statement that refers to the importance of considering age in determining whether a child's impairment(s) is severe. We also added a cross-reference to § 416.924(d), the severity step of the sequence. For consistency, we also

added a cross-reference to § 416.924(f), the individualized functional assessment step, at the end of the sentence.

Because the reorganization combines all of the general provisions regarding the individualized functional assessment into two sections (final §§ 416.924d and 416.924e), we deleted the reference to §§ 416.924a and 416.924c in the parenthetical sentence at the end of § 416.924a(4), which describes the relevance of age at the last step of the sequence, and added a reference to final §§ 416.924d and 416.924e.

In response to the comments, we added a new paragraph (a)(5) for children who may be difficult to test because of their young age. The new paragraph says that in any determination we will consider a child's age and whether it affects the child's ability to be tested. Even when a child's impairment(s) is not amenable to formal testing because of age, we will consider all evidence that will help us decide whether the child is disabled. We explain our reasons for this addition in the public comments section of the preamble.

Final § 416.924a(b), "Age categories," identifies the age categories that we use to describe children's functioning. Using these categories helps us to sort out the kinds of evidence we would expect to need for children of different ages, and to organize guidelines for determining disability in children of different ages. In response to comments, we have deleted the clause after the semicolon, "however, we will not apply these age categories mechanically in borderline situations." We made this change because there is no danger that mechanical application of the age categories in childhood claims will result in any advantage or disadvantage (as there might be in adult claims when the vocational "grid" rules are applied). We explain our reasons for the deletion, and why it responds to the public comments, in greater detail in the public comments section of the preamble.

Final § 416.924a(c), "Correcting chronological age of premature infants," explains when and how we correct the chronological age of a premature infant when deciding whether, or the extent to which, a physical or mental impairment(s) affects a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. We have substantially revised and reorganized the paragraph in response to public comments. The paragraph formerly discussed the evaluation of both premature and low birth weight infants. However, the text

pertaining to low birth weight infants merely repeated the examples of functional equivalence that appeared in § 416.926a(d) (10) and (11) of the prior rules (final § 416.926a(d) (8) and (9)), and provided no additional guidance. Moreover, as one commenter pointed out, there was a minor inconsistency between the definitions of "prematurity" in this paragraph and in § 416.926a(d)(10) of the final rules. Since it was redundant to repeat the criteria of two of the functional equivalence rules, we deleted the provisions.

With the deletion of the provisions on low birth weight infants, the rule now addresses the correction of chronological age for premature infants, which was always its primary focus. We revised, reorganized, and clarified the rule in response to public comments. Final § 416.924a(c) now explains that when a child was born prematurely (i.e., at less than 37 weeks' gestation), we may use a "corrected" chronological age to evaluate the child's development or linear growth. Final § 416.924a(c)(1) describes the two situations in which we apply a corrected chronological age, and final § 416.924a(c)(2) describes when and how we compute a corrected chronological age. Paragraph (c)(2) also explains that we will not correct a child's chronological age if we can determine from the evidence that a child's developmental delay is the result of a medically determinable impairment(s) and is not attributable to prematurity. Finally, final § 416.924a(c)(3) explains that we also will not compute a corrected chronological age if medical evidence shows that the treating source or other medical source has already taken a child's prematurity into consideration in assessing the child's development, or when we find a child disabled using the examples of functional equivalence based on low birth weight in final § 416.926a(d) (8) or (9).

We have revised § 416.924b(d) of the prior rules (final § 416.924a(d)) concerning age and the impact of severe impairments on younger children and older adolescents in response to a number of comments which demonstrated to us that the prior rule was not as clear as it could have been. In the opening of paragraph (d) and in new paragraph (d)(1), we clarify that impairments of similar severity may have different effects on children of different ages and that how a child adapts to an impairment depends on many factors. Thus, we consider in each case how a given child's impairment(s) affects him or her, irrespective of age. New paragraph (d)(1) also explains what

we mean by a child's ability to "adapt" to an impairment(s).

In final paragraph (d)(2), we incorporate the provisions of § 416.924b(d)(3) of the prior rules with minor editorial clarifications. In final paragraph (d)(3), we combine into a more logical presentation the provisions beginning with the second sentence of § 416.924b(d)(1) (with minor editorial changes) through § 416.924b(d)(2) of the prior rules.

In new paragraph (d)(4), we state more clearly the principle from the prior rules that the age-appropriate functional abilities, skills, and behaviors of older adolescents (i.e., children aged 16 to 18) are the same as those that are appropriate for 18-year-olds. Therefore, the disability determination for an older adolescent must be consistent with the disability determination we would make for an 18-year-old having the same functional limitations.

We explain all of the foregoing changes and clarifications in the public comment section of the preamble.

Section 416.924b—Functioning in Children

Pursuant to the reorganization described above, this section emphasizes the important principles that we consider all of a child's impairment-related mental and physical limitations and the extent to which the child is able to engage in age-appropriate activities on a sustained basis when we assess functioning at steps 2, 3, or 4 of the sequential evaluation process. It also now provides definitions of the terms we use when we describe functioning in children. Final § 416.924b(a), "General," was moved from § 416.924c(a) of the prior rules. Similarly, final § 416.924b(b), "Terms used to describe functioning," was § 416.924a(c) of the prior rules. To make clear that the terms "age-appropriate activities," "developmental milestones," "activities of daily living," and "work-related activities" apply at every step of the sequential evaluation process, and how the terms "domains" and "behaviors" apply at the last step of the sequence, we added the clause, "which we use when we perform an individualized functional assessment," to the first sentence of final § 416.924b(b)(5), "Domains and Behaviors." We changed the heading of final paragraph (b)(5) to "Domains and Behaviors" to reflect all the functional areas in which we evaluate children. The "domains" pertain to a child's major spheres of activity (cognitive, communicative, physical, social/emotional, and personal/behavioral). The "behaviors" pertain to certain areas

of behavior (responsiveness to stimuli; concentration, persistence, and pace). This change was needed to clarify language used later in final §§ 416.924d and 416.924e. Finally, in response to a comment, we deleted from the first sentence of final § 416.924b(b)(5) the phrase, "development or", and added a new fourth sentence which explains that the domains and behaviors include all of a child's functioning at any particular age, a new fifth sentence which explains that all effects of a child's impairment(s) on daily functioning will be considered within the domains and behaviors, and a new sixth sentence which explains that the presence of pain or other symptoms can adversely affect functioning in the domains or behaviors.

In final § 416.924b(b) (2) and (3), we have changed the age ranges we refer to when we use the terms "developmental milestones" and "activities of daily living." The final rules now state that the term "activities of daily living" refers to children aged 3 to 16 (instead of 6 to 18) and that the term "developmental milestones" refers to children from birth to age 3 (instead of birth to age 6). We also added a new paragraph (b)(4), "Work-related activities," for older adolescents, which we had inadvertently omitted from the prior rules, and revised the age references in final paragraph (b)(5) to be consistent with the foregoing revisions. We made these changes in response to a comment that pointed out inconsistencies between these sections and final § 416.924d, "Individualized functional assessment for children"; therefore, the corrections were necessary. They do not represent new policies, but merely make the rules consistent. The changes also respond to several comments that expressed concern about the terms we use to describe functioning in younger children. We explain this comment and provide more detail about our reasons for making the revisions in the public comments section of the preamble.

Section 416.924c—Other Factors We Will Consider

This section discusses factors that may be relevant to how an impaired child is able to function and, therefore, that may be relevant to the evaluation of functioning at any step of the sequence. Pursuant to the reorganization of the rules, and for reasons we have already discussed, we therefore revised the section heading and § 416.924d(a) of the prior rules (final § 416.924c(a)), "General," to delete references to the individualized functional assessment

and to make the applicability of the rules clearer.

In § 416.924d(b) of the prior rules (final § 416.924c(b)) "Chronic illness," we added a new first sentence and revised the prior first sentence (now the second sentence) and the prior second sentence (now the third sentence) in response to several comments. The revisions clarify our original intent that this section is intended to provide guidance for the evaluation of chronic, episodic impairments.

In a technical correction, we deleted the phrase, "for children with similar needs," from the second sentence of § 416.924d(d) of the prior rules (final § 416.924c(d)), "Effects of structured or highly supportive settings." We did this because some special classrooms may involve heterogeneous groupings, and not only accommodate children with similar needs.

In response to a number of public comments, we revised and reorganized § 416.924d(e) of the prior rules (final § 416.924c(e)), "Adaptations," to make our original intent clearer. The revisions provide that some adaptations may enable a child to function normally or almost normally, whereas other adaptations may increase the child's ability to function but the child will still have limitations. We deleted the reference to adaptations that may themselves impose limitations in response to a comment which pointed out that the statement was inaccurate. However, we retained all of the parenthetical examples except for the example of "sleep."

In § 416.924d(f) of the prior rules, (final § 416.924c(f)), we changed the heading of the paragraph from "Multidisciplinary therapy" to "Time spent in therapy", in response to a comment. In the first sentence, we changed the phrase, "more than one kind of health care professional" to "one or more kinds of health care professionals" to indicate that even one kind of therapy may be very time-consuming. In the second sentence, we deleted reference to "multidisciplinary therapy" and now state simply that therapy may include the various kinds of services mentioned in the sentence. In the last sentence, we replaced the clause, "you have an impairment(s) of comparable severity to an impairment(s) that would disable an adult," to "you can function independently, appropriately, and effectively in an age-appropriate manner," because the prior language suggested that the factor of multidisciplinary therapy would be considered only at the fourth step of the sequential evaluation process. We explain these changes in more detail in

the public comments section of this preamble.

In § 416.924d(g) of the prior rules, (final § 416.924c(g)) "School attendance," we added the clause "when it is relevant and available to us" to the end of the second sentence. In the second sentence of final § 416.924c(g)(2), we added the word "regular" before the word "classroom," and the words "appropriately, and effectively" to the phrase, "to function independently." All of these revisions were responses to comments, and they ensure that the provisions more accurately describe our original intent and practice. In final § 416.924c(g)(3), we added the phrase, "independently, appropriately, and effectively" after "to function."

We explain all of the foregoing revisions in more detail in the public comments section of the preamble.

Section 416.924d—Individualized Functional Assessment for Children

This section discusses the fourth step of the sequence for children, at which we must do an individualized functional assessment to determine whether a child whose impairment(s) is severe, but which does not meet or equal in severity the requirements of a listed impairment, has an impairment(s) which is of comparable severity to one that would disable an adult.

Section 416.924a(a) of the prior rules, "General," (final § 416.924d(a)) remains unchanged except that we have updated the cross-references following the third sentence to reflect the reorganization of the rules.

We added a new § 416.924d(b), "Responsibility for individualized functional assessment," in response to a comment that pointed out that we had identified adjudicative responsibility for equivalence determinations (in § 416.926a(c)) but had omitted a similar provision for the individualized functional assessment; we also have a similar provision in § 416.946 describing responsibility for the adult residual functional capacity assessment. As we explain in more detail in the response to the comment, the omission of the provision was an oversight, and the language we have added is adopted from §§ 416.926a(c) and 416.946 and reflects our current policies. Therefore, the new paragraph is not a new rule; we are merely adding it to fill a gap in the rules and for consistency with other, similar provisions.

As already noted, we have redesignated § 416.924c(a) (2) through (g) of the prior rules, as final § 416.924c (c) through (j). We have also made minor heading changes and

redesignations for clarity. Thus, we provided a heading, "Domains of development or functioning," to final § 416.924d(c) because § 416.924c(a)(2) of the prior rules, from which it was adopted, had no heading. We also renumbered subsections (i) through (vii) as (1) through (7). Section 416.924c(a)(3) of the prior rules, which also had no heading, is now (with minor text changes) final § 416.924d(d), "How we use the domains," and § 416.924c(a) (3), (4), and (5) of the prior rules is redesignated as final § 416.924d(d) (1), (2), and (3). Finally, we redesignated the remaining § 416.924c (b) through (g) of the prior rules as § 416.924d (e) through (j).

In § 416.924c(a)(5) of the prior rules (final § 416.924d(d)(3)), we have added a cross-reference to § 416.924a(a)(5) for the guidelines on age and a child's ability to be tested.

In § 416.924c (b) through (g) of the prior rules (final § 416.924d (e) through (j)), which are the paragraphs that describe the domains and behaviors for each of the age categories, we made some additions and revisions to the language of the general descriptors and examples of children's functioning in each age group. These additions were made in response to suggestions by experts in professional child development, health, and disability who submitted comments to us. None of the additions represents a substantive change in the descriptors; rather, they simply enhance the descriptors so that they are more detailed and inclusive. The specific improvements are discussed in detail in the public comments section of this preamble.

In addition to the changes to final § 416.924d made in response to public comments, we made a few technical corrections. In final § 416.924d(e)(5), we rephrased the descriptor for greater clarity. In final §§ 416.924d(f)(5) and 416.924(g)(5), we changed the word "or" to "and" in the sentences that constitute each of the provisions so that the example of personal/behavioral development reads, "* * * your ability to help yourself and to cooperate with others in taking care of your personal needs * * *." This change was needed because the disjunctive "or" suggested that a child's self-care behavior would be normal if he or she could cooperate with another person in meeting personal needs, even if the child could not help himself or herself to meet those needs.

In another technical correction, we deleted the term "self-control" from final § 416.924d(g)(4) because that behavior is more appropriately addressed under personal/behavioral functioning in a new phrase,

"responding to limits," which is explained in the response to comments below. We also deleted the phrase, "and self-care," in final §§ 416.924d(h)(3) and 416.924d(i)(3) because the activities involved in self-care were inappropriately placed under the motor domain and are already addressed explicitly under the domain of personal/behavioral functioning. In final § 416.924d(h)(5), we changed the statement, "to understand authority relationships and school rules," to "to respond appropriately to authority and school rules," in order to make this language the same as the language in final § 416.924d(i)(5). Moreover, the statement better focuses the descriptor on the child's observable behavior rather than his or her subjective understanding. Similarly, in final §§ 416.924d(h)(5) and 416.924d(i)(5), we changed the word "develop" in the prior statement, "develop a sense of responsibility for yourself and respect for others," to the word "manifest," again to focus on the child's observable behavior.

The final technical corrections were in final § 416.924d(j)(2). We replaced the phrase, "an indication of," in the fourth sentence, the phrase, "some indication of," in the fifth sentence, and the phrase, "as it relates to," in the eighth sentence, with the phrase, "as evidence of." This change makes the language of the three sentences consistent with the other sentences in the paragraph. The change is only editorial and not substantive; we were concerned that, without the change, our intent in using different language in the sentences might have been questioned, when in fact we had no special reason for using different words.

Section 416.924e—Guidelines for Determining Disability Using the Individualized Functional Assessment

This final section is substantively the same as the corresponding section in the prior rules. In final § 416.924e(a), "General," we revised the clause following the semicolon in the second sentence. We made the revision in response to comments that asked us to use the third part of the basic definition of disability for children contained in § 416.924(a) wherever possible in these rules because it refers specifically to children. Because we agreed with the commenters, we revised the clause to say that the guidelines illustrate an impairment or combination of impairments that "substantially reduces your ability to function independently, appropriately, and effectively in an age-appropriate manner." Inasmuch as this is our regulatory definition of disability,

it is not a substantive change from the prior rules but a clarification.

In final § 416.924e(b), "How we describe functional limitations," we made a technical correction, changing the word "impairments" in the second sentence to "limitations." The change merely corrected an error: In context, the sentence plainly refers to moderate "limitations" resulting from impairments, not a person's medically determinable impairments. Moreover, we use the word "limitations" in the same context later in the sentence and in the third sentence of the paragraph. We added the phrase, "in a domain or behavior," to the end of the next-to-last sentence and after the word "functions" in the last sentence of paragraph (b) in response to a comment which said that the addition of this language from the preamble (56 FR at 5542) would make the sentences clearer. We made similar additions to the second and third sentences of paragraph (b)(1), and to paragraphs (c)(2)(i) and (ii) and (d)(2).

In paragraph (b)(3), we added cross-references to §§ 416.968 and 416.969a to the second sentence; the former reference was inadvertently omitted from the prior rules, while the latter reference was published subsequent to the prior rules (in the final rules on the evaluation of symptoms, including pain, 56 FR 57947, November 14, 1991). Finally, we revised cross-references throughout § 416.924e(b) to reflect the reorganization of the rules.

In response to many comments, we added to final § 416.924e(c)(1), "Young children (birth to the attainment of age 3)," and § 416.924e(c)(2), "Older children and young adolescents, age 3 to attainment of age 16," the same guidance we provide in § 416.924e(d)(1)(ii) for older adolescents; i.e., that the guidance in the examples is not a standard by which all cases must be judged, and that each case must be evaluated on its own merits using the principles and guidelines of all the childhood disability rules. We also revised cross-references throughout both sections to reflect the reorganization.

In final § 416.924e(d), "How we evaluate older adolescents, from age 15 to attainment of age 18," we deleted the words "severity for" from the former heading. This is a technical correction to make the heading of the paragraph consistent with the language in the headings of paragraphs (c)(1) and (c)(2) of the section. In response to a comment that we had not mentioned the domains of functioning in this section, we added clauses referring to the relevant domains to the opening sentences of paragraphs (d)(2), "Mental functions," and (d)(3),

"Physical functions." In paragraph (d)(4), we added two provisions, designated (d)(4)(i) and (d)(4)(ii), in response to a comment that said we should define the term "substantial loss or deficit," which we use in paragraph (d)(4). The new provisions derive from the rules in final §§ 416.924(a)(3) and 416.924e(d)(1), and adopt language from our manual instructions. Finally, we revised the cross-references throughout this section to conform to the reorganization of the rules.

We explain the provisions in § 416.924e(d)(4) and all of the foregoing changes in more detail in the public comments section of this preamble.

Section 416.926a—Equivalence for Children

In response to public comments, we revised the final rules on functional equivalence to strengthen their concepts and make them clearer. Thus, we added clarifying language to § 416.926a(b)(3), the section that describes "functional equivalence." In this section, we restate the principles that we will consider the combined effects of all of a child's impairments and that, for purposes of the "functional equivalence" determination, the child's impairment(s) need not be medically related to the listing we choose for comparison. We also revised several of the sections in paragraph (d), "Examples of impairments of children that are functionally equivalent to the listings," to underscore the policy that the list of examples is not all-inclusive.

We also made three technical revisions. First, in paragraph (c), we added the phrase, "of the Secretary," after "other designee" in the first sentence in order to parallel the language in § 416.924d(b) regarding responsibility for the individualized functional assessment. Second, we added a statement in paragraph (d) that the statutory duration requirement must still be applied to the examples, and we deleted the statement, "lasting or expected to last 12 months," from former examples (3) and (9) (final examples (3) and (7)). Our inclusion of the phrase in these two examples in the prior rules could have suggested that the duration requirement applied only to those two examples. Since the duration requirement is a basic requirement of the statute, however, our intent and practice have always been to apply it to all of the examples. We conclude paragraph (d), therefore, with cross-references to §§ 416.909 and 416.924(a). Third, in final example 11 we have added the clause, "and the impairment is expected to be disabling (because of residual impairment following surgery,

or the recovery time required, or both)," after the words "surgical correction," to make the meaning of the example clear. The additional language is, again, designed to underscore the need to satisfy the statutory duration requirement.

In addition, we deleted three examples in response to comments (examples 4, 6, and 15 in the prior rules) either because they illustrated a severity level greater than is required to meet or equal the listings or could have been viewed as redundant of other examples. We also revised several of the examples to clarify that they apply to physical impairments or combinations of physical and mental impairments. We explain all of these revisions in detail in the public comments section of this preamble.

Section 416.928—Symptoms, Signs, and Laboratory Findings

In response to several comments that asked us to provide a specific provision to address the special problems some children have in articulating their symptoms, we have added a new second sentence to § 416.928(a), "Symptoms." The new sentence explains that we will accept a description from the person who is most familiar with the child as a statement of symptoms of a child who is unable to adequately describe his or her symptoms. We explain our reasons for this addition in greater detail in the public comments section of this preamble.

Section 416.994a—How We Will Decide Whether Your Disability Continues or Ends, Disabled Children

This section provides the medical improvement review standard rules for children. We retained the entire section as published in the prior rules, with one clarifying text revision, which we added in response to a comment. In § 416.994a(d)(2), "Previous decision based on an individualized functional assessment," we added language to the second sentence which clarifies that we will take into consideration any current medical findings or functional limitations related to the previously existing impairment when we do the new individualized functional assessment based on impairments that existed at the time of the most recent favorable decision. We explain the reasons for this additional language, and our responses to the other comments about this section, in the public comments section of this preamble.

We also revised all of the cross-references consistent with the reorganization of the rules.

Public Comments

Subsequent to the publication of the Final Rule with Request for Comments in the *Federal Register* (56 FR 5534) on February 11, 1991, we received 44 letters from 42 different sources commenting on the new childhood disability rules. In a number of cases, which we describe below, we received the same comment and recommendations from several commenters; in nearly every case in which this happened, the comments and recommendations used identical or nearly identical language.

Most of the comments came from advocacy and legal groups that represent children with disabilities. Other comments came from people and organizations representing children with specific diseases, disorders, or health problems, and from professional medical and health care organizations. Some of the commenters had specialized backgrounds in pediatrics, psychiatry, communication disorders, and other specialties involving child health and disabilities. We also received comments from several public agencies and professional organizations having an interest in these rules.

The comments on the rules were generally favorable. By far, most of the comments asked us to strengthen, expand, or clarify principles in the rules, or to add even more rules. These comments, which were submitted within the first few months after promulgation of the prior rules, were often expressed in terms of predictions and fears that the new rules would not be applied properly.

In a number of instances, we adopted the comments because we agreed with the commenters that the rules could be clarified or strengthened. However, in many instances we did not adopt the comments that predicted misapplication unless we revised the rules. This is because we now have more than two-and-one-half years' experience using the rules and closely monitoring their use. Based on our experience using the rules, and our monitoring of the implementation of the rules, we are able to state with confidence that the potential problems that concerned the commenters did not materialize or were dealt with swiftly through quality reviews, careful training and the instructions we provided to our adjudicators on the implementation of the rules. Therefore, even though many of the comments that we did not adopt were well thought out and earnestly presented, it transpired that there was no need to make the changes suggested.

Some of the comments did not pertain to the new childhood disability rules. We have not addressed those comments in this preamble, but have referred them to the appropriate components of SSA. Finally, because a number of the comments were quite long and detailed, we had to condense, summarize, or paraphrase them. However, we have tried to express everyone's views accurately and to respond to all of the relevant issues raised by the commenters.

Specific Comments

Section 416.903—Who Makes Disability and Blindness Determinations

Comment: One commenter pointed to the absence from the regulation of the provision of Public Law (Pub. L.) 101-508, section 5036, now codified at section 1614(a)(3)(H) of the Act (42 U.S.C. 1382c(a)(3)(H)). Section 1614(a)(3)(H) states, in pertinent part, that, "In making any determination under this title with respect to the disability of a child who has not attained the age of 18 years * * *, the Secretary shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the child * * * evaluates the case of such child." The commenter noted that the requirement in the law obviously legitimizes the same policy position stated in our manual instructions; however, the absence of this provision in the regulation creates a serious discrepancy.

Response: We agree with the commenter and have addressed the requirements of section 1614(a)(3)(H) by incorporating the appropriate language of Public Law 101-508 in §§ 416.903(f) and 416.1015(e).

Section 416.913—Medical Evidence of Your Impairment

Comment: One commenter made suggestions for specific language changes in § 416.913(e). The commenter recommended that we add the phrase, "and to perform age-appropriate daily activities," at the end of the first sentence of § 416.913(e) so that it would be identical to the language in § 416.913(c)(3). The commenter also recommended that in § 416.913(e)(2) we change the phrase "non-medical sources" to "people who know you" to be more accurate, and add "other caregivers" at the end of that section to be more inclusive. Finally, the commenter recommended that in § 416.913(e)(3) we change the word "practitioners" to "medical sources."

Response: We adopted or accommodated some, but not all, of the recommendations. We agree that the language in the opening paragraph of § 416.913(e) should be consistent with § 416.913(c)(3). But instead of adding the phrase "and to perform age-appropriate daily activities" to the first sentence of § 416.913(e), we deleted it from § 416.913(c)(3), where it was redundant. The prior wording of § 416.913(c)(3) implied that we were making two separate determinations: One about the child's ability to function in an age-appropriate manner and another about the child's ability to perform age-appropriate daily activities. In fact, only one determination is made. We use information about how a child performs age-appropriate daily activities to evaluate whether the child can function independently, appropriately, and effectively in an age-appropriate manner.

We adopted both of the comments about § 416.913(e)(2) by replacing "non-medical sources" with the phrase, "people who know you," deleting the word "and" after "neighbors," and adding the phrase, "and other caregivers," after "parents." We did not adopt the recommended language change in § 416.913(e)(3). Under § 416.902 of our current rules (as revised in the "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR 36932, which we published on August 1, 1991, after the close of the comment period for these rules), the term "medical source" is a term of art that has a different meaning than "practitioner." We are, therefore, unable to make the change.

Comment: One commenter suggested that if we intend to revise § 416.913(a) to include licensed or certified school psychologists as "acceptable medical sources," the revision should be made in these final regulations.

Response: We did not adopt the comment. We have decided that there is no need to revise § 416.913(a)(3) because it provides that we will recognize as acceptable medical sources any licensed or certified psychologists; this includes licensed or certified school psychologists, who are acceptable medical sources for the documentation of mental retardation or learning disabilities. However, because school psychologists are not acceptable medical sources for all mental impairments, we have retained the reference to "school psychologists who are not acceptable medical sources under paragraph (a)" in § 416.913(e)(5) of the final rules.

Comment: One commenter remarked that school-age children in New Jersey

for whom a Child Study Team (CST) evaluation has been done in a local school district may enjoy some advantage in obtaining SSI benefits because that evaluation will provide the kinds of evidence needed to pursue a child's disability claim. On the other hand, the commenter noted, the parents of impaired preschool children, especially those between birth and age 2 who do not qualify for the CST evaluation, may need assistance in arranging the proper protocol of mental and physical examinations necessary to document the eligibility of their children under the proposed final rule. The commenter recommended that we develop specific guidelines to assist these parents in obtaining the diagnostic instruments that are acceptable to SSA in making such disability determinations.

Response: Such rules are unnecessary because we assist children in documenting their claims. Under § 416.912(d) of our rules, before we may make a determination that a child is not disabled, we are required to make every reasonable effort to develop the child's medical history for at least 12 months preceding the month in which the application is filed. This means that we may either assist the child and his or her parents or other caregivers in obtaining existing evidence or actually obtain the evidence for the child—provided, of course, that we have permission from the person who is pursuing the claim on behalf of the child or the person who has the authority to give us this permission. In addition, if the available evidence is not sufficient to support a decision on a claim, we may purchase the needed information—including, if necessary, the kinds of tests and evaluations to which the commenter referred—through the consultative examination process. Therefore, we do not believe that the children about whom the commenter was concerned will be disadvantaged.

Section 416.916—If You Fail To Submit Medical and Other Evidence

Comment: Several commenters believed that our revision of § 416.916 did not go far enough to address the particular problems that children may face in providing evidence. They described a number of problems and situations unique to child claimants, which they thought we should address in regulations. One commenter would have liked to see either modification of the regulations or clear guidelines, presumably in our manual instructions.

Other commenters noted that the March 14, 1991, Stipulation and Order of the United States District Court for

the Eastern District of Pennsylvania (the court to which the case was remanded after the Supreme Court decided *Zebley*) requires SSA, in adjudicating the cases of *Zebley* class members, to "make special efforts to assist children in documenting eligibility and * * *, in cases of non-cooperation, (to) make special efforts to locate an adult person responsible for the child's care and * * * not terminate, deny, or disqualify the child until a personal contact with his family or custodian has been attempted." The commenters thought that we should accord all child applicants at least the same consideration that *Zebley* class members receive.

Response: We do not believe that there is good cause for publishing the recommended changes without first publishing a Notice of Proposed Rulemaking (NPRM). We are seriously considering whether to publish an NPRM on the subjects raised by the commenters. We believe that we would receive opinions on both sides of the issue, and that, therefore, publication of a final rule now would be contrary to the public interest. We will, however, consider all of the commenters' concerns and suggestions if we decide to publish an NPRM.

Comment: One commenter recommended that the regulations acknowledge that some of the responsibility for gathering school records be assigned to the Social Security District Offices. The commenter said that municipal budget cuts in school systems are affecting the support staffs in special education departments where school records for many child claimants are held. The staffs of these departments often do not have the capacity to respond to many requests and to send us the school records we need. The commenter also said that, for a number of reasons, parents may have difficulty in obtaining records from their children's schools and was concerned that we not consider this difficulty to be noncooperation.

Response: While we appreciate the difficulty some school districts may have in complying with our requests for records, we do not believe it is appropriate to instruct our Field Offices to secure this information in the manner suggested by the commenter. Each school district would have to agree to give SSA employees access to their records, which some may not be willing or able to do. Additionally, some Field Offices do not have sufficient staff to obtain these records in the manner the commenter suggested. Therefore, decisions about using Field Office or State agency personnel to develop

school or other evidence will have to be made on a local level, as they are now.

With regard to the last comment, we believe that we made clear in an earlier response that we do not generally require parents to obtain and bring evidence from other sources to us. We make every reasonable effort to assist children and their parents by trying to obtain evidence for them, provided that we have permission to do so. Therefore, we do not consider a parent's inability to obtain evidence to be noncooperation.

Section 416.924—How We Determine Disability for Children

Comment: We received two comments about our use of a standard of "comparable severity" to define disability in children in § 416.924(a). The commenters thought that the basic definition of "disability" in § 416.924 ("* * * an impairment or combination of impairments that is of comparable severity to an impairment or combination of impairments that would disable an adult") was a problem because an adult's disability should not serve as the standard for children. One commenter suggested that we strike the language in § 416.924(a), and throughout the remainder of the rules regarding comparable severity to that of an adult.

Response: We have accommodated the comments, even though we have not adopted the specific suggestions. As we explained in the preamble to the prior rules (see 56 FR at 5534 and 5537), the standard of "comparable severity" is derived from the language of section 1614(a)(3)(A) of the Act. For this reason, we have included it in our rules.

Nevertheless, we agree with the commenters that the adult standard of disability, based on the ability to work, should not serve as the standard for evaluating a child's disability without translation into terms that are meaningful for childhood claims. This is why the definition of disability in § 416.924 is divided into three parts, each progressively more detailed and progressively more specific to children. In the first part of the definition, we repeat the statutory definition because it is the benchmark set by the law and we are required to follow it. In the second part of the definition, however, we further define "comparable severity" in terms appropriate to children (i.e., the ability to function independently, appropriately, and effectively in an age-appropriate manner) although—as the second commenter noted—we ultimately return to the "comparable severity" language of the law. Finally, in the third part of the definition, we

elaborate the first two parts in a more detailed explanation of what it means to be disabled as a child; that is, to experience a substantial reduction of ability to function age-appropriately. The three parts of the definition are not meant to be read separately, but together as a totality defining "comparable severity."

To emphasize that we have translated the principle of "comparable severity" into terms relevant to children, and in response to both comments, we have removed language in final § 416.924(f) (1) and (2), which referred to "comparable severity," and have substituted language from the second and third parts of the definition, which speaks of the substantial reduction of a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. For the same reason, we made a similar change in the second sentence of final § 416.924(a).

Comment: One of the foregoing commenters also believed that a number of the definitions of terms in the childhood disability regulations needed to be expanded or changed. The commenter thought that the definitions of "impairment," "disability," and "handicap" published in the American Medical Association's Guides to the Evaluation of Permanent Impairment could serve as a starting point, and offered to work with us in formulating definitions for the childhood disability regulations.

Response: Although we appreciate the commenter's offer of assistance in developing terms to describe our program concepts which would conform to usage by other programs, we did not adopt the comment. Many of our terms are terms in the statute and regulations that we adopted for consistency in the new regulations for children. For example, and as we explained above, the basic definition of "disability" for children in § 416.924 is taken from the statutory definition of the term. Similarly, the statute contains a specific definition of the term, "physical or mental impairment" in section 1614(a)(3)(C) of the Act. The term "handicap" would have no meaningful place in our program, inasmuch as the Act does not recognize degrees of disability. Thus, we do not believe that we would be able to make the kinds of changes in the definitions of our terms suggested by the commenter. Furthermore, any changes we could make to definitions of terms shared by the childhood and adult rules would require changes in the adult rules as well and would, therefore, be beyond the scope of these rules.

Comment: We received comments from 17 commenters, many with identical language, about the clause in § 416.924(a) of the prior rules, "or if you are an infant from birth to the attainment of age 1, be reasonably expected to substantially reduce * * *." Most of the commenters seemed to believe that the sole purpose of the provision was to provide guidance for the evaluation of the children who are too young for certain tests. Most commenters also seemed to understand that the language of the rules permitted adjudicators to make informed judgments of the likely effects of impairments and, hence, of the likelihood of disability.

All of the commenters thought that we should change the former reference to age 1 to a later age, saying that many children will be difficult to test even if older than 1 year. Several of the commenters stated, in identical language, that this limitation would "continue arbitrary denials to children over one who remain too young to test." They pointed to Listings 102.02 (for vision), 102.08 (for hearing), and 101.03 (for walking), as being especially difficult for small children to meet. Several of the commenters also said that, because of this, the clause either violated the Supreme Court's decision in *Zebley* or was not supported by the decision. One commenter noted that it was not only a child's very young age, but also the nature of the child's condition that might preclude formal testing.

Several commenters asserted that they were unaware of any medical basis for our choice of age 1. Another commenter observed that not every child will be developmentally affected by a particular disability by the attainment of age 1, and that not all severe physical disabilities will manifest themselves in developmental terms by age 1. In addition, several commenters offered comments to the effect that, in the case of some conditions, parents may not be given a diagnosis until their child is age 4 or 5, despite evidence of developmental delay. One commenter wanted us to extend the age limit of the provision to 6 years for several reasons. The commenter said that, given the rapid development of young children, childhood specialists find it difficult to assess adequately and accurately the functional limitations of children under 6 years of age. Often, a child may manifest symptoms and conditions in infancy or early childhood that may improve or deteriorate by a later age. Adjustment of the "reasonable expectation" standard to 6 years of age would allow children who appear to

suffer from limitations that cannot actually be tested with a "presumption" of disability that can be later reviewed at the continuing disability review stage. On the other hand, another commenter—discussing the physical impairment of cystic fibrosis—said that, if a child is given an individual functional assessment and not immediately denied benefits, the restriction to age 1 may be acceptable.

Response: We have deleted the entire clause in response to the comments. We also added a new provision to the rule that discusses age, § 416.924a.

Our original intent in the statement, "or if you are an infant from birth to the attainment of age 1, be reasonably expected to substantially reduce," was to provide a special consideration for the very youngest children, whose medical conditions might be difficult to diagnose, or whose specific functional problems might be difficult to ascertain, because their very young age precludes accurate medical or standardized testing. We reasoned that a judgment might be required on the basis of all available evidence whether a child's impairment(s), even though not diagnosable or not amenable to specific medical testing (such as central visual acuity), were demonstrated to be disabling and could be reasonably expected to remain disabling.

We did not choose age 1 arbitrarily or as a cutoff point, but for several reasons that seemed reasonable and valid:

1. First, and foremost, we thought that children under age 1 could be viewed as a special case with respect to the statutory duration requirement that an impairment "must have lasted or be expected to last for a continuous period of not less than 12 months."

2. Second, there was considerable interest on the part of the experts that we provide special considerations—the "benefit of the doubt"—for the youngest infants, particularly those under age 1. We believed that this provision would address those concerns.

3. Third, and as we have explained in the preamble to the publication of the final childhood mental listings (55 FR 51227, December 12, 1990), we do not entirely agree with the commenters who said that there is no medical basis for choosing age 1 in a rule for children who are not always amenable to testing. Even though we agree that the problems of testing can, and often do, persist beyond age 1, they become less and less of a factor for our program purposes, especially under these rules, as children get older, even by ages 2 or 3.

After more than one-and-one-half years of adjudicatory experience, however, we now realize that the clause

could have been unclear (as shown by several of the comments). The reason it could have been unclear is that it seemed to state a principle that was somehow different from our normal policies; i.e., it seemed to say that, even though we do not ordinarily consider whether an impairment that has not yet lasted for 12 months will last for at least 12 months, we would make an exception for infants. This, of course, is not the law or our policy. We often make reasoned decisions predicting duration based on the available evidence, knowledge of the course of an impairment, and other informed judgments in both childhood and adult claims.

Consequently, we decided to delete the language from the rule. As a result, we did not adopt the first two of the three language revisions suggested by the commenters. The commenters first recommended that we delete the first part of the clause, "or if you are an infant from birth to the attainment of age 1," from the third sentence of § 416.924(a) of the prior rules leaving only the statement, "or * * * be reasonably expected to substantially reduce * * * ." In our view, the lack of reference to any age category (even to the categories that include the children who are too young to be tested) would have made the statement seem contrary to the statute; as we have said, the reasonable and acceptable interpretation of the language (i.e., that it referred to a child who has already demonstrated a disability save for the duration requirement) is a fundamental part of disability evaluation for all people under the Act and regulations.

The second proposed change also had the same problems. The commenters proposed that we revise the second sentence of § 416.924(a) of the prior rules (final § 416.924d(a)) to add the words "or potential" in the following context: "When we assess your functioning, we will consider all information in your case record that can help us determine the impact or potential impact of your impairment(s) * * * ." We believe that this language is still sufficiently ambiguous that it could be misinterpreted. In any case, we believe that it does not provide any additional policy or substantive clarification to warrant its inclusion.

We therefore believe that deleting the passage is the best way to respond to the comment. Moreover, the deletion carries the advantage that it removes the reference to an upper age limit and permits the principles to be used with any child of any age who may be untestable.

Even with the deletion, there are still several, far more substantive, provisions that address the problems of children who are too young to test in these rules. In a more general way, the entire body of the rules protects such children. The comment about the physical impairment, cystic fibrosis, was on point: The fact that with these rules we can find a child disabled based on an individualized assessment of his or her functioning takes precedence over whether it is possible to diagnose exactly what is wrong with the child or the extent of loss of such functions as vision or hearing. We were frankly surprised at the number of commenters who submitted the comment that pointed out the importance of being able to test children in order to find out whether their impairments meet Listings 102.02, 102.08, and 101.03. The whole point of the *Zebley* decision and of these rules is to provide ways to establish disability in children whose impairments do not meet (or equal) any listing.

More specifically, the policy of functional equivalence provides a direct method for finding disabled infants and young children who have listing-level impairments manifested only by functional limitations; it is plainly a rule for children who, for any reason, cannot be appropriately tested. Beyond the listings step, the rules in final §§ 416.924d and 416.924e provide methods for establishing disability in such children based on an individualized assessment of their functioning. Again, it is not necessary to quantify the degree of visual or auditory functioning when there is poor bonding or lack of responsiveness to stimuli; or whether a child's failure to thrive and chronic cough are the result of cystic fibrosis; or whether a child's failure to thrive and poor social responsivity are the result of an emotional disorder of infancy. We need only know that there is a medically determinable impairment and how it affects the child's functioning—and, of course, that it has lasted or, based on our review of all the evidence and informed judgment, can be expected to last for at least 12 months.

More specifically still, final § 416.924d(a) (§ 416.924a(a) of the prior rules) explicitly states that we will consider a child's ability to be tested:

When we assess your functioning, we will consider all information in your case record that can help us determine the impact of your impairment(s) on your physical and mental functioning. We will consider the nature of your impairment(s), your age, your ability to be tested given your age, your ability to

perform age-appropriate daily activities, and other relevant factors.

Finally, one of the most important provisions in these rules, which we believe goes to the heart of the comparability standard, is the age provision in final § 416.924a(d) (§ 416.924b(d) of the prior rules). In this section, we provide detailed guidance for the kind of special consideration that must be given to the effects of impairments on small children.

We do find helpful, however, part of the third suggested revision submitted by the commenters, although we believe that it should be given an even broader application than the commenters suggested. The commenters recommended that we add two sentences to the section on the role of age in determining whether an impairment equals a listing, in § 416.924b(a)(2) of the prior rules (final § 416.924a(a)(2)): We will also consider your age and how it affects your ability to be tested. In cases where you are too young to test, we will make equivalence determinations of present disability based on available evidence, medical knowledge of the course and early signs of impairments and informed clinical judgments.

Aside from the obvious problem that discussions of equivalence and age may more properly belong under final § 416.924a(a)(3), we believe that the first of the proposed sentences has more general applicability. We, therefore, did not want to make the statement only in the context of a discussion of the listings step because it might obscure our intent. However, we also agree that this particular paragraph of the rule on age is an ideal location for stating plainly the policy we have been applying since we first published the prior rules: We consider a child's ability to be tested at every step of the sequential evaluation process. For this reason, we have added a new subparagraph (5) at the end of final § 416.924a(a) which states that in any determination we will consider a child's age and whether it affects the child's ability to be tested. Even when a child's impairment(s) is not amenable to formal testing because of age, we will consider all evidence that will help us decide whether a child is disabled.

For reasons which should be apparent from all of the foregoing discussions, we were unable to adopt the second proposed sentence. The proposed language, in fact, simply describes a good disability determination, one that considers all the available evidence, and that employs knowledge of the course and signs of impairments, and informed judgment. We believe that this new

language offers the protection that the commenters sought, and that we originally intended, for children who are too young to be tested.

Section 416.924(c)—If You Are Working

Comment: One commenter noted that the first step of the sequential evaluation process for determining whether a child is disabled involves proof that the child is not engaging in substantial gainful activity (SGA). The commenter said that because children, unlike adults, do not engage in work activity, the adult rules should not be used to determine whether a child is engaging in SGA. The commenter said that we should ask whether the child is engaging in "substantial child-like activities." The commenter went on to say, "In the context of a child, substantial gainful childhood activity means the ability to engage in such activities as, but not limited to, rolling, sitting, or crawling, at a level comparable to the child's age group."

Response: The definition of disability in section 1614(1)(3)(A) of the Act applies to both adults and children. Although most children do not work, there are those who do, particularly among older adolescents. The determination at the first step of the sequential evaluation process does not consider a child's abilities; it asks whether the child is actually working. If a child is actually engaging in substantial gainful activity, then he or she is not disabled. However, we believe that the remainder of the sequential evaluation process is consistent with the commenter's recommendation: The degree of the child's ability or inability to function in an age-appropriate manner ("at a level comparable to the child's age group," in the commenter's terminology) is at the core of the childhood disability evaluation process.

Section 416.924(d)—You Must Have a Severe Impairment(s)

Comment: Some commenters said the *Zebley* decision provides no basis for a "severity" step in these rules, that it establishes a new barrier to eligibility, in violation of *Zebley*, and is enjoined in district court. They said the Supreme Court's "limited approval" of the severity step for adults in *Bowen v. Yuckert*, 482 U.S. 137 (1987), did not approve application of the same step in child claims.

The commenters' overall concern was that the severity step would be used to deny children without an individualized functional assessment. There were particular concerns about children with multiple slight physical impairments, about children under age

5, and about children whose cases are difficult to evaluate.

There were various recommendations: that we eliminate the severity step altogether; that we eliminate it for a year and then evaluate implementation of the rules without it; and that we monitor implementation of the step and reevaluate its usefulness by some specified future date. There were also recommendations on revising the language in the severity step if it were to be retained, such as elimination of the phrase "more than minimal" or addition of the word "independently" after "function." Commenters also recommended that we adapt language from the preamble to the prior rules: "If the effect of your medically determinable impairment or combination of impairments is so minimal that it could not possibly be disabling, we will find that you do not have a severe impairment and are, therefore, not disabled."

Response: We did not adopt all the comments, but we have further clarified our rules, consistent with several of the commenters' proposed language changes. As we explained in the preamble to the prior rules (56 FR at 5538 and 5552), the severity step is consistent with the Act because it makes the whole childhood evaluation process more comparable to the adult process. Moreover, in *Zebley*, the Supreme Court noted that the "statutory standard for child disability is explicitly linked to (the) functional, individualized standard for adult disability." *Zebley*, 110 S.Ct. at 890. The Supreme Court emphasized that the child and adult disability standards are to be read together so that "a child is entitled to benefits if his impairment is as severe as one that would prevent an adult from working." *Id.* Given the Supreme Court's recognition in *Zebley* that the childhood and adult disability standards are "explicitly linked" and the fact that the Supreme Court in *Yuckert* upheld the facial validity of the step for adult claims, we believe inclusion of a severity step is valid for children, who receive an evaluation process comparable to the one that adults receive.

We, of course, share the commenters' concerns that step 2 not be misused. Therefore, we have closely monitored its use over the more than one-and-one-half years since implementation of the prior rules. Our monitoring has shown that the step results in a denial of benefits in only a small percentage of cases, and that State agencies understand and apply the severity step correctly.

Although a formal individualized functional assessment is not required at step 2, we do consider each child's functioning at that step of the sequential evaluation process although not in precisely the same manner as we do at later steps in the sequential evaluation process. A denial based on a finding of nonseverely is proper only if it is clear that any impairment-related functional limitations are, at most, minimal or slight. We believe that the reorganization of the rules, which makes it clear that functioning is assessed at steps 2, 3, and 4 of the sequential evaluation process, and § 416.929(d)(1) of the current rules on the evaluation of pain and other symptoms (56 FR 57946, November 14, 1991) will help to underscore these principles.

To make this point even clearer, and to address the other concerns expressed by the commenters, we have now also revised final § 416.924(d) to reflect our longstanding interpretation in Social Security Ruling 85-28 ("Titles II and XVI: Medical Impairments That Are Not Severe"). That is, if a child's impairment is a slight abnormality or a combination of slight abnormalities that causes no more than a minimal limitation in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner, we will find that the child's impairment(s) is not severe, and that the child is, therefore, not disabled. We believe that this revision will respond to the comments which asked us to clarify even further that "not severe" equates with "slight" or "minimal." The change also responds to concerns about our consideration of multiple impairments. It also responds to the comment that asked us to add the word "independently" before "age-appropriate activities"; we expanded the language to "independently, appropriately, and effectively" for consistency within the rules and because we think that comment speaks to all three aspects of functioning.

We have already explained why we believe the childhood disability rules will not disadvantage younger children. If the evidence shows that the child has more than a slight or minimal limitation in functioning as a result of his or her impairment(s), we will find that the child has a "severe" impairment(s). We do not need to know exactly how limited the child is in order for our evaluation to cross this threshold (as some commenters assumed); more precise assessments are needed only at the last step of the sequence.

We did not adopt the recommendations to delete the severity step or postpone its implementation

during the first year after publication of the former rules, but we will, of course, continue to monitor its application and, if necessary, take corrective action. As noted above, we have made some of the recommended language changes so as to make the rules even clearer.

Comment: One commenter cited "error" rates through May 31, 1991 in six States as evidence of abuse of the severity step.

Response: The early rates cited by the commenter were not "error" rates; rather, they were cases returned to the State agencies following quality reviews, ordinarily to obtain additional evidence. These cases were considered to be "documentation returns," not "decisional errors." We have intentionally returned many cases for documentation deficiencies, including cases in which the adjudicator inadequately addressed an allegation in the rationale or did not properly explain a decision which was otherwise correct. Such errors do not represent cases in which it is likely that the decision itself is incorrect.

Thus, we strongly disagree with the assertion that these particular returns or any others represent "abuse" of the impairment severity step. As we stated in the prior response, we have carefully monitored the use of the step and at no time, even in the early months of implementation, have we found any patterns of misunderstanding or abuse. In fact, our quality reviews have shown that the rate of decisional errors in childhood cases using this step is very low. Notwithstanding the commenters' fears, we see no patterns that indicate adjudicators are misusing the severity step after more than a year-and-a-half of using the rules.

Comment: One commenter said the severity step appears to require a finding about the child's ability to function before a functional assessment is made.

Response: The commenter was partially correct. Functioning is considered at step 2, but in a less detailed way than at step 4, just as evaluations of the ability to do basic work activities at step 2 of the adult sequential evaluation process are less detailed than assessments of residual functional capacity. Such decisions do not require either consideration of whether the impairment(s) meets or equals in severity any listing, or the much more detailed individualized functional assessment that is required at step 4 of the sequential evaluation process.

Comment: One commenter said that the definition of "severe" in § 416.924(d) does not sufficiently allow

for the effects of a disease like juvenile arthritis. For example, many children with juvenile arthritis are able to attend school and be in normal classes, but they arrive late every day because of acute joint inflammation. They have difficulty moving between classrooms and cannot participate in all activities. According to the commenter, studies have shown that children with juvenile arthritis have a higher than average absentee rate because of illness. As adults, they may be able to work but have difficulty finding an employer willing to accommodate their needs.

Response: We have not adopted this comment. Children who are frequently absent from school because of chronic impairments, who have difficulty walking (for instance, because of morning stiffness, even if it does resolve later in the day), and who cannot participate in all activities at school are limited in age-appropriate activities. Moreover, such children might well be disabled, depending upon the degree of their limitations. Based on our experience using the rules, we are confident that our adjudicators understand the severity step and are able to apply our rules to adjudicate claims involving impairments like juvenile arthritis.

Comment: Several commenters asserted that inclusion of the severity step without an NPRM violated the Administrative Procedure Act.

Response: We disagree, as we have already explained in the preamble to the prior rules (56 FR at 5549 and 5552). We believe that there was good cause for publishing the prior rules as final rules with a request for comments because publishing an NPRM was impracticable and contrary to the public interest. Moreover, even though we implemented the prior rules upon publication, we did solicit comments on the rules and provided the public an unusually long comment period of 147 days.

Comment: One commenter pointed out that we acknowledged there are no program benefit savings and only small administrative savings from the severity step. Several other commenters said that under the pre-Zebley disability rules, childhood claims involving not severe impairments were subsumed under the listings and effectively screened out by application of the listings. The commenters thought these claims could still be screened out just as effectively at the listings step and through an individualized functional assessment. The first commenter also asserted that the administrative savings we predicted may be unreal because we must still consider the impact of the impairment on the child's functioning at this step.

This commenter also said there were no reports or studies from the 9 months under the Interim Standard (the court-ordered standard we used during the period after the Supreme Court decided *Zebley* and before the date we published the prior rules) showing any need for this step.

Response: We disagree with the commenters that there are insufficient reasons to justify the inclusion of a severity step in these rules. As we noted in the preamble to the prior rules (56 FR at 5552), there are some savings for cases decided at step 2 because the functional analysis at step 2 is less detailed than the analysis required at step 4. More importantly, however, the step also helps us more quickly decide the cases that clearly do not have merit. As the Supreme Court noted in *Bowen v. Yuckert*, 482 U.S. at 153, the severity regulation increases the efficiency and reliability of the evaluation process by identifying at an early stage those claimants whose medical impairments are so slight that they would not be found eligible even if we were to proceed to the later steps of the evaluation process. Our experience using the severity regulation in the past two-and-one-half years has shown that this is true in childhood disability cases as well. Therefore, we believe there are valid reasons to include the severity step in the evaluation process for children.

The Interim Standard did not include a "not severe" step, and therefore could not show whether such a step would be useful. In any case, we now have more than two-and-one-half years of case reviews and experience demonstrating the efficacy and accuracy of the step.

Section 416.924(e)—When Your Impairment(s) Meets or Equals a Listed Impairment in Appendix 1

Comment: One commenter pointed out that the Supreme Court found the severity of the listings to be more restrictive than the statutory standard. The commenter recommended that, to emphasize that the listings no longer set the standard for children's disability, we should add specific language to § 416.924(e) and § 416.924b(a)(2) of the prior rules (final § 416.924a(a)(2)) to make it clear that the listings represent a more severe standard than is necessary to establish disability. The commenter also suggested we make it clearer that, unless the child is performing substantial gainful activity, a child's claim must always be approved if his or her impairment satisfies the duration requirement and the requirements of a listed impairment, but that failure to meet or equal a listing will never justify

denial of a claim. Another commenter made the same comment without referring to the *Zebley* decision.

Response: We did not adopt the comment because it is unnecessary. The current rules clearly state this policy, and it is not necessary to restate it in other places. As we have explained above, each rule must be read in the context of all the rules in subpart I; no rule stands alone without reference to all of our other rules. Aside from the fact that we provide a sequential evaluation process with a step beyond the listings step—which in itself should be sufficient to establish that no child will be denied solely for failure to have an impairment(s) that meets or equals a listing—final § 416.924(e) states: "We will not deny your claim on the basis of a finding that your impairment(s) does not meet the requirements for any listed impairment or is not equal in severity to any of the impairments listed in appendix 1." Moreover, since the Supreme Court decided *Zebley* in February 1990 cases have not been denied on the basis that a child's impairment(s) did not meet or equal in severity any listed impairment.

Comment: Several commenters pointed out that the Supreme Court had found the listings to be inherently incomplete (by virtue of being a finite list) and always in danger of being out-of-date. Therefore, in order to comport with the Supreme Court's analysis, and to facilitate and encourage use of the functional equivalence principle, the commenters recommended that the regulations should more directly acknowledge the limited role and shortcomings of the listings.

Response: We did not adopt the comment. As we discuss below with regard to the comments on functional equivalence (final § 416.926a), the Supreme Court made these statements in the context of examining the propriety of a listings-only test of disability for children. The point of the analysis was to show why we could not establish a standard of comparable severity by confining our adjudication to the listings, and why we were required to devise another step beyond the listings in order to satisfy the comparable severity standard in the statute. The Court did not state or even imply that we should alter the method of adjudication at the listings step, or that we should be required to acknowledge any shortcomings of the listings. (As we explain later, we did improve our method of adjudication under the listings in an effort to improve our entire disability evaluation process for children even though this was not a requirement of the *Zebley* decision.)

Moreover, based on our operating experience since implementing the prior rules, we do not believe that it is necessary to "encourage" the use of the functional equivalence policy; our adjudicators are well aware of its existence and how to apply it.

Comment: Three commenters called on us to update the Listing of Impairments for children's disabilities, noting that the listings for some conditions are already out-of-date, that others are incomplete, and that others are lacking. One commenter stated that the current listings did not include fetal alcohol syndrome (FAS), acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV) infection that is not AIDS. Another commenter said that the listings did not include AIDS, Down syndrome, muscular dystrophy, infant drug dependency and FAS. One commenter pointed out that the Supreme Court had stated that the listings did not include spina bifida. 110 S.Ct. at 893, n.13. This commenter said that the rules should be amended to provide an expedited procedure for making additions to the listings. The commenter suggested that such a procedure might be established by providing in the preamble to the listings that "the Secretary, or the Secretary's delegate may, in his or her discretion, add to the listing in concert with a petition by interested public citizens or groups." Another commenter called for a formalized mechanism to review and modify listed impairments based on current medical knowledge, stating that such an approach would be consistent with the current rules, which say that the listings are not intended to be self-limiting.

Response: We have not adopted these comments. We are in the process of revising the listings for both children and adults; however, these revisions go far beyond the ambit of the present rules and will be proposed through normal Administrative Procedure Act (APA) rulemaking procedures. We have published final revisions of both the multiple body system listings, which includes Down syndrome, FAS, and other such disorders, and the childhood mental listings (55 FR 51204 and 51208, December 12, 1990). We have also published NPRMs proposing to update the listings for endocrine and multiple body system disorders and to add rules for the evaluation of immune system disorders, including human immunodeficiency virus (HIV) infection (56 FR 65702, December 18, 1991), adult mental disorders, which may be applicable to children in certain circumstances (56 FR 33130, July 18, 1991), the respiratory listings, including

the childhood asthma listing (56 FR 52231, October 18, 1991), and the cardiovascular listings, including the childhood listings (56 FR 31266, July 9, 1991). We have also published in the *Federal Register*, Social Security Ruling 91-8P, which addresses our procedure for the evaluation of HIV infection and specifically addresses the manifestations of the infection in children (56 FR 65498, December 17, 1991).

At the time we received the comments about Down syndrome and FAS, there were specific listings for both impairments, in Listing 110.06 (for Down syndrome) and Listing 110.07 (for FAS). The second paragraph of section 110.00A.2. of the listings explains that FAS is an example of an impairment that should be evaluated under Listing 110.07; by inference, we also include infant drug dependencies under that listing. (See 55 FR 51204, December 12, 1990.) Although the diagnosis of "in muscular dystrophy" is not specifically stated in the listings, Listing 110.06, "Motor dysfunction due to any neurological disorder," describes the impairment. Similarly, our listings (though not using the exact name) actually have long included spina bifida at Listing 111.08, meningomyelocele, which is the technical, anatomical description of what can be a serious, listing-level result of spina bifida.

Finally, we do have a formal mechanism for updating the listings, and our mechanism is consistent with what the commenter recommended we do.

Comment: One commenter observed that "the individual condition listings carry some elements of physical functioning; however, they provide no generic view of physical disability nor are they consistent across condition groups. A person with less disability may be determined eligible because of the idiosyncracies of one specific disease compared to another." Another commenter recommended that, to facilitate functional equivalence determinations, all the childhood listings be revised to include both medical and appropriate functional considerations, as was done with the mental disorders listings in 112.00 of the Listing of Impairments.

Response: Although the first comment was not entirely clear, we believe that the commenter was saying that some listings have criteria that are less severe than the criteria in other listings, especially among the physical listings. Although it might be debated whether such comparisons are possible or even necessary, any differences are insignificant because a claimant may be

found disabled using the policy of functional equivalence, and because there is another step beyond the listings step at which children whose impairments do not meet or equal listings can still establish that they are disabled. However, as we revise each of the listings sections, we will consider including appropriate functional considerations, as suggested by the second commenter.

Section 416.924(g)—Basic Considerations

Comment: One commenter wanted to know the meaning of statements in the preamble and in § 416.924a(b) of the prior rules (final § 416.924(g) with regard to determining the validity and reliability of formal testing. The commenter quoted preamble language (" * * * the results of standardized testing should be consistent with the remainder of the record * * * " (56 FR at 5538)) and asked whether it means that if the child appears to be functioning at a level higher than the score would suggest, SSA will disregard the scores.

Response: We do not disregard any test scores that we receive in a child's claim. We believe the meaning of final § 416.924(g)—which is also nearly identical to language in 112.00D of the childhood mental listings—is clear. It says, in pertinent part, that " * * * any discrepancies between formal test results and your customary behavior and daily activities should be duly noted and resolved." We do not disregard any relevant medical or nonmedical evidence, including test scores, but neither do we disregard apparent conflicts in the record when we consider that evidence in conjunction with the rest of the evidence. We take whatever steps are necessary (e.g., recontact with the testing source for input on the validity of the test scores, or recontact with other medical or nonmedical sources to find out more about the child's actual ability to function) to determine whether there really is a conflict, and to resolve the issue.

Comment: Three commenters noted that although the proposed final rules show an appreciation of the importance of obtaining information about a child's functioning from nonmedical sources such as parents, teachers, and other caregivers, the regulations do not require us to obtain records from these sources. The commenters feared that unless we explicitly acknowledge this responsibility in regulations and give instructions for obtaining these records, we may not fully develop the child's claim. One of the commenters was

particularly concerned that the regulation does not strongly recommend that adjudicators obtain details on the child's health from the child's personal physician; the commenter recommended that we include a provision requiring the use of this information. Amending language on these issues was suggested for § 416.924a(b)(2) of the prior rules (§ 416.924(g)(2) in these final rules).

Response: Final § 416.924(g) clearly states that we will consider nonmedical evidence in any case in which it is relevant. Because a significant number of children are found to be disabled based solely on medical evidence, it is not necessary to require the development of nonmedical evidence in all cases. We did not adopt the comment that we should add language to these rules requiring our adjudicators to obtain evidence from the child's treating physician because, shortly after the close of the comment period for these rules, we published final rules in the *Federal Register* which accomplish the same goal. Pursuant to § 416.912(d) of the final rules, "Standards for Consultative Examinations and Existing Medical Evidence," published on August 1, 1991 (56 FR 36932), we will make every reasonable effort to develop a complete medical history for at least the 12 months preceding the month in which the application is filed, before we make a determination that a child is not disabled.

Section 416.924a—Age as a Factor of Evaluation in Childhood Disability

Comment: Three commenters recommended that we replace the last clause of § 416.924a(b) of the prior rules (final § 416.924a(b))—"however, we will not apply these age categories mechanically in borderline situations"—with different language. One commenter suggested that we use language from the preamble which would remove the reference to "borderline situations" and emphasize that each case must be evaluated on its own merits. The other two commenters echoed these comments but suggested their own replacement language. One commenter thought that rigid application of the age categories carried the greatest risk of any provision in the childhood disability rules of being mechanically applied, which would work to the detriment of at least some children.

Response: We responded to the comments by deleting the statement and in the general reorganization of the rules.

The clause in § 416.924a(b) of the prior rules was almost identical to the

last sentence of § 416.963(a), the rule setting out the adult age categories, the language of which we had adopted for consistency. However, we emphasize in these rules that the age categories in the childhood rules have a different purpose than the age categories in the adult rules. In the adult rules, assignment to a particular age category can be dispositive of the issue of disability. This is because, under the medical/vocational rules and guidelines in appendix 2 to subpart P of part 404, it is possible for an adult who is in a lower age category (e.g., a "younger individual," aged 49) to be found not disabled, while another adult, with the same residual functional capacity, education, and work experience but who has reached the next age level (e.g., a person who is 50 years old and, therefore, "closely approaching advanced age") might be found disabled.

The childhood regulations, however, do not contain rules like those for adults in appendix 2. The childhood age categories function as descriptive devices; that is, they are a convenient way for us to describe functioning and the kinds of evidence we would expect to need for children of different ages (in § 416.924d), and to set down guidelines for determining disability (in § 416.924e). Moreover, all of the guidelines in final § 416.924e regarding what may constitute a disability in the different age categories are set at the same level of severity; they merely use different descriptors to describe age-appropriate assessments of disability. Therefore, there is no disadvantage (or advantage) to a child's being "assigned" to one age category or another.

We believe that the general reorganization of the final rules also makes this clear. By moving § 416.924a(c) of the prior rules, "Terms used to describe functioning," into final § 416.924b, "Functioning in children," we have incorporated into the basic rules on the assessment of functioning in children the principle that the various descriptors of functioning (activities of daily living, developmental milestones, etc.) can be used across age categories where appropriate. Thus, for example, the final rule at § 416.924b(b)(3) on the assessment of functioning provides that, "[o]rdinarily, activities of daily living are the most important indicators of functional limitations in children aged 3 to 16, although they may be used to evaluate children younger than age 3." This is also a basic principle in the listings that use age categories. For instance, in the preamble to the final publication of the

childhood mental disorder listings, we stated:

This is not to say that children who are older than 1 cannot be found to have an impairment which is equal to the severity of listing 112.12. As we emphasize throughout these responses, any child who does not have a listed impairment can still be found disabled if he or she has an impairment or combination of impairments that is equivalent to any listed impairment. Children older than 1 whose impairment manifestations are identical or sufficiently similar to the requirements of 112.12 could, in certain situations, be evaluated using the new listing (55 FR at 51227).

The reason we did not adopt the suggestion to incorporate our language from the preamble to the prior rules is that it still implies that assignment to a particular age category can somehow matter in the ultimate decision of disability. On balance, we think that the better course of action is to delete the idea and reorganize the rules, as discussed above.

Comment: Three commenters objected to the provision in § 416.924b(c) of the prior rules (final § 416.924a(c)). That section states that we compute a corrected chronological age for premature children until the prematurity is no longer considered a significant factor, generally around age 2. The commenters argued that the provision appears contrary to the statute. They said that, although a pediatrician may need to adjust a child's chronological age to determine whether a developmental delay is permanent, the law does not require that a child have a permanent impairment in order to establish disability. The commenters also thought that using an adjusted age could result in incorrect disability determinations. They gave an example of an 18-month-old child, born 10 weeks prematurely and with mild mental retardation, who would be found to have an impairment that meets the childhood mental disorder listings if she were found to be functioning at less than $\frac{2}{3}$ of her chronological age in two of the paragraph B criteria of the childhood mental disorder listings (i.e., if she were functioning at a chronological age of 12 months). However, the commenters stated that if we were to adjust her chronological age to correct for her prematurity, her "adjusted" age would be 15½ months and she would not meet the listing criteria.

The commenters also thought that correcting a child's chronological age denies children who were premature an individualized assessment of their

impairments, although they did not explain why they thought this.

Two of the commenters submitted identical recommendations for language changes to § 416.924b(c)(3)(i) of the prior rules (final § 416.924a(c)(2)(i)). The changes would have indicated that we correct chronological age: (1) Only when there is a question whether any delay was caused "solely" by prematurity that is expected to resolve; (2) only in the first year of life, and (3) only when we cannot separate out other causes for the delay. The suggested provision would also have provided for the payment of benefits retroactive to the date of application if it later developed that a disabling condition was present. In a similar vein, the third commenter recommended that if we were to use a corrected chronological age at all, we should limit it to the first year of life and only when we cannot identify specific medical or genetic causes for the delay.

Response: We partially adopted the comments. We believe the commenters misunderstood both our intent and how the rules function, but we believe that the prior rule can be made clearer. It is not our intention in adjusting a premature child's chronological age to determine whether a child has a "permanent impairment," nor is that the purpose of such an adjustment in pediatric practice. Pediatricians adjust a premature child's chronological age in order to make the results of their evaluations more valid and predictable. Such an adjustment is also more useful in planning treatment or intervention, and in the pediatricians' discussions with parents about a child's possible developmental delays. A pediatrician must be certain that a child is progressing physically and mentally according to an expected developmental channel.

In the case of a premature child, it is necessary to consider the child's gestational age at birth in order to know whether the child is progressing within a normal range of development given his or her gestational age at birth. If, given the child's adjusted chronological age (i.e., adjusted for gestational age at birth), the child's progress is not within a normal expected range, the pediatrician then must consider ongoing monitoring of the child's development and provision of intervention services. For example, infants usually are able to turn their bodies from a supine to a prone position by 3 or 4 months of age. If a child who was born 2 months prematurely cannot do that at a chronological age of 4 months, the adjustment of the child's chronological age to 2 months lets the physician and

parents know that there is no cause for concern at that time. If, on the other hand, the same child at a chronological age of 6 months could not turn her body to a prone position, there would be cause for concern because the child's adjusted chronological age would be 4 months, an age at which the infant would be expected to be able to perform that developmental skill.

Our reasons for adjusting a premature infant's chronological age are similar to those of pediatricians. We need to know if a child's functioning at the time of our evaluation is age-appropriate or whether the child is not functioning in the way we would expect, a sign of impairment-related limitation. In the case of a premature infant, the only way to ensure that our evaluation of the child's functioning is valid is to take into consideration the child's gestational age at birth, and to adjust accordingly our idea of what is age-appropriate for that infant.

We must also point out that in many instances we do not have to compute a child's adjusted chronological age and reinterpret the evidence in terms of that adjustment. This is because the adjustment is made by the treating physician or psychologist (or consulting physician or psychologist) when he or she evaluates test results for assessing a child's development. The medical source would record the child's chronological age, the date of testing, the child's adjusted age at the time of testing, and the child's performance within a range, or at a level of functioning in various areas (e.g., motor, social). If the treating or consultative source's report is not clear about whether the child's prematurity has been taken into consideration, we will recontact the source to ask that question, pursuant to § 416.912(e) of our regulations. (See, "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR at 36963.)

However, we agree with the commenters to some extent that it is not always appropriate to adjust a child's age between the ages of 1 and 2. Within pediatric practice, there is general agreement that a premature child's age should be adjusted up to 12 months of age for the purpose of evaluating either development or linear growth, because it is very difficult in the first year of a child's life to differentiate the effects of prematurity from the effects of any possible underlying impairment. It is also generally agreed that for the purpose of evaluating development, a child's age need not be adjusted after 24 months of age because by that time a premature child should have "caught up" in terms of achieving

developmental milestones. When a premature child is still exhibiting significant developmental delays at 24 months, it is more clearly discernible that those delays are attributable to an identifiable disorder. Within the period between 12 to 24 months of age, however, pediatric practice varies as the pediatrician sorts out developmental effects that may still be attributable to prematurity from those that may be attributable to a medically determinable impairment. During this period, pediatricians may make a full adjustment of age (e.g., deducting 10 weeks from a child's chronological age if the child was born 10 weeks prematurely), or only a partial adjustment (e.g., deducting 5 weeks from a child's chronological age if the child was born 10 weeks prematurely), or no adjustment at all.

In cases of developmental delay, whether or not an adjustment of chronological age is made during the period between 12 and 24 months of age depends upon clinical judgment about many qualitative factors concerning the child's development and the severity of the child's developmental delays. The more significant the developmental delays, the more likely it is that no adjustment or only partial adjustment would be made, because the observable delays are more likely to be the result of underlying impairment rather than of prematurity. For instance, in the example provided by all three commenters about the 18-month-old child with mild mental retardation (i.e., mental retardation with an IQ in the 60 to 70 range), it is not necessarily the case that a pediatrician (whether treating, consultative, or reviewing) would fully adjust the chronological age of the child. Many factors would have to be considered. For example, manifestations of delay in more than one area of functioning, as indicated in the example, tend to suggest that the child is experiencing the global effects of the medically determinable impairment rather than of prematurity. Therefore, the clinician would have to consider the particular nature and severity of the medical impairment(s) and the child's delays in order to determine whether full, partial, or no adjustment of age would be appropriate. We must also add again that the example submitted by the three commenters seemed to assume that the child had to have an impairment that met the listings in order to be found disabled; this, of course, is not the case under the new rules.

Given the foregoing discussions and the comments, we have revised the rules to indicate more clearly that when

assessing either development or linear growth in premature children, we will make a full adjustment for chronological age until age 1; thereafter, in cases involving developmental delay and until prematurity is no longer a factor (generally, around age 2), we will decide whether to make an adjustment and, if so, the extent of the adjustment to be made. Our decision will be based on judgment, informed, of course, by the individual facts of the case, including any treating source opinion on the matter. Even though it is not the exact approach the first two commenters suggested, we believe that it is fair, consistent with standard pediatric practice, and administratively feasible. We did not adopt the first two commenters' suggestion that, when we have made an unfavorable decision in a case, we should provide benefits retroactive to the date of the original application if we later determine that a disabling impairment was present. However, the rules for reopening in §§ 416.1487 to 416.1493 would still be applicable should the claimant reapply. In addition, the claimant has the right to appeal an adverse determination in accordance with our regulations.

Comment: A number of people submitted the same comment, asking us to delete § 416.924b(d)(3) of the prior rules. The commenters thought that the paragraph stated we would make assumptions about a child's "adaptability" based on age without individualized consideration of the effects of the child's impairments. Most of the commenters said that it is not true that every child benefits from increased adaptability as he or she grows older. Some commenters said that older adolescents may experience a variety of impairments that may render their functioning similar to that of younger children, and make any transition into the adult workplace exceedingly difficult. Advocates of children with severe physical impairments (e.g., cerebral palsy, spina bifida) were concerned that the general guidance in § 416.924b(d)(3) of the prior rules might be applied as a presumption in the case of adolescents whose impairments only exacerbate the difficulty of assimilation into adult society as they grow older. The commenters said that evaluation of a child's adaptation to his or her impairment(s) and ability to function age-appropriately must consider the nature of the child's impairment(s), when the impairment(s) began, and how it affects the particular child.

Two commenters perceived the provision as a "double-counting" of the factor of age in the case of older adolescents. That is, they thought we

make a general presumption of increased adaptability due to the adolescent's age in addition to considering the child's age as a factor in the individualized functional assessment (i.e., in terms of the child's performance of age-appropriate activities of daily living).

Two commenters also recommended the deletion of the last sentence in § 416.924b(d)(2) of the prior rules: "Generally, the more global effect of these kinds of impairment on development diminishes with increasing age."

Response: We disagree with the commenters, but we have clarified final § 416.924a(d) in response to the comments. We believe that it is a well-established and widely accepted principle that, given the nature of child development, impairments that occur during the early developmental period generally have a more pervasive impact on a child's functioning than those that occur later in life.

We did not intend the statement of this general truth, however, to obscure the fact that adaptability to an impairment is a highly individual matter regardless of one's age. For this reason, we evaluate an older adolescent's impairment(s) in the same manner that we evaluate all other children's impairments: We consider those activities, skills, and behaviors that are appropriate for children of the same age. It is also certainly true that adolescents may experience serious functional limitations resulting from developmental, degenerative, or traumatic impairments, as well as other impairments with onset later in childhood. Therefore, we do not "presume" that an older child is better able to adapt to his or her impairment than a younger child; we evaluate each case on its own facts.

To make this policy clearer, we have revised the opening sentences of § 416.924b(d) of the prior rules (final § 416.924a(d)), and added a new § 416.924a(d)(1), both of which explain that these guidelines apply to determinations of disability, not to the assessment of functioning itself. New paragraph (d)(1) explains that we recognize that how a child adapts to an impairment(s) depends on many factors, including the nature and severity of the impairment(s), the child's temperament, adult intervention, and the child's age at onset. We then explain that "adapting to an impairment" means the child's ability to learn skills, habits, or behaviors that allow the child to compensate for the impairment(s) and to function as well as possible despite the impairment(s). Finally, we explain that

our disability determination will consider how the child has adapted to the impairment(s) and how well the child is functioning, considering all appropriate factors.

Comment: Several commenters thought that the principle in § 416.924b(d) of the prior rules was not legal. The commenters said that the statute allows us to consider an adult's age when determining disability, but that the law has no similar provision for children.

Response: We disagree with the comments. The Act does not preclude consideration of age in childhood claims. Indeed, as we have already stated at the beginning of this preamble, the statute states very little about what the standard of disability for children should be, only that a child's impairment(s) should be of "comparable severity" to an impairment(s) that would disable an adult. Because the statutory standard is one of comparability to the adult standard, we believe that consideration of age is permissible under the law.

Comment: Several commenters discussed whether the new rules set a higher standard of disability for older adolescents. Five commenters, in identical language, said that the rule might be considered a higher standard and, therefore, be misapplied. One commenter said that the provision violates the spirit of *Zebley* because it sets a higher standard of disability for older adolescents. Finally, one commenter said that we treat 16-18-year-olds as if they were already younger adults, subject to SSA's adult claimant rules. The commenter said that we were required to do a full analysis of the child's functioning, using the five functional domains.

Response: We disagree with these comments. We do not evaluate the disability claims of older adolescents using a higher standard than we use for younger children, nor do we believe that these rules disadvantage older adolescents. Our rules recognize that adolescents begin activities that prepare them for the world of work, and that these activities may occur both in and outside of school. Specifically, with regard to older adolescents, the definition of disability in § 416.924(a)(3) recognizes that the functional abilities, skills, and behaviors that are age-appropriate for 16-to-18-year-olds are those that are also age-appropriate for 18-year-olds; i.e., those capacities that allow a person to function in the adult world. Final § 416.924a(d) provides more detail to the basic definition. We have established a new § 416.924a(d)(4) for adolescents, which clarifies

principles from the basic definition of disability in § 416.924(a)(3) and in § 416.924b(d) of the prior rules, and adopts language from our manual instructions. In new subparagraph (d)(4)(ii) we clarify our policy that, inasmuch as age-appropriate functioning for an older adolescent is also that of an 18-year-old, the disability determination for an older adolescent must be consistent with the disability determination we would make for an 18-year-old with the same functional limitations. Thus, final § 416.924e(d) further describes the work-related mental and physical functions that we evaluate for older adolescents.

We also do not believe that the rules violate the letter or spirit of *Zebley*. As required by the Supreme Court's decision, the rules provide older adolescents an additional adjudicative opportunity beyond the listings step to demonstrate they are disabled, comparable to the opportunity which is given adults. Our experience has shown that the rules have not been misapplied.

Finally, we do not apply SSA's adult claimant rules to the claims of older adolescents. Older adolescents receive the same kind of individualized functional analysis as all other children under these rules. When we perform an individualized functional assessment, we draw a profile of how an older adolescent is functioning by considering his or her activities of daily living in the applicable functional domains. We then evaluate whether those activities are age-appropriate. That is the same general process by which we evaluate the impairment(s) of a child of any age. For an older adolescent, once we have gathered all the information we need about the adolescent's activities of daily living, we construct a profile of his or her functioning in all of the five functional domains that may be affected by the impairment. Once that profile is established, we translate the functional information that we have into work-related (and, therefore, age-appropriate) terms. The profile we draw of the adolescent's physical abilities must enable us to determine if he or she can perform the basic physical demands of at least sedentary work. The profile we draw of the adolescent's mental abilities must also enable us to determine if he or she can perform the basic mental demands of at least unskilled work. This is not the same determination we make for adults: In an adult's claim, the disability determination finally addresses whether the person can do past relevant work or other work; a disability determination in an older adolescent's claim does not address whether the child can work, only

whether the child can do work-related physical and mental activities.

Comment: One commenter said that it is important to emphasize that § 416.924b(d) of the prior rules provides only guidelines concerning the impact of severe impairments on younger children and older adolescents. It was recommended, therefore, that we add three sentences from the prior preamble (56 FR at 5540) to the paragraph.

Response: Although we did not incorporate the exact language suggested by the commenter, we provided two sentences in § 416.924a(d)(4)(ii) which have the same meaning. We also believe that we have addressed the comment by adding final § 416.924a(d)(1), the new paragraph that provides rules on how children "adapt" to their impairments.

Section 416.924b—Functioning in Children

Comment: One commenter pointed out that there were inconsistencies in § 416.924(a), § 416.924a(c), and § 416.924e(b) of the prior rules in our use of terms to describe functioning at the different age levels. The commenter recommended that we make these various age category descriptions consistent.

Response: We adopted the comment. We agree that there were some unintentional inconsistencies in the rules. For example, § 416.924a(c)(2) in the prior rules, (§ 416.924b(b)(2), "Developmental milestones," in these final rules) stated that "developmental milestones" are ordinarily the most important indicators of impaired functioning in children from birth until the attainment of age 6, although they might be used to evaluate older children, especially school-age children. However, § 416.924e(b)(1) in the prior rules ("How we describe functional limitations") appeared to stress the use of developmental milestones only for children aged from birth to 3 years while § 416.924e(c)(2) in the former rules seemed to stress the use of activities of daily living in children aged 3 to 6.

We have, therefore, stated in § 416.924b(b)(2) in the final rules (§ 416.924a(c)(2) in the prior rules) that "failures to achieve developmental milestones" are ordinarily "the most important indicators of impaired functioning from birth until the attainment of age 3, although they may be used to evaluate older children, especially preschool children." This revision makes § 416.924b(b)(2) consistent with the guidance in final § 416.924e(b)(1), the language of which we have not changed. The revision also

makes both sections consistent with our basic definition of disability in § 416.924(a)(1). Similarly, § 416.924b(b)(3) now states that "activities of daily living" are ordinarily "the most important indicators of functional limitations in children aged 3 to 16," but that "they may be used to evaluate children younger than age 3." This makes the language of § 416.924b(b)(3) consistent with our statements in § 416.924e(b)(2), which is unchanged, and § 416.924(a)(2) in the basic definition of disability. We have also added a new § 416.924b(b)(4), "Work-related activities," for children aged 16 to 18, to be consistent with §§ 416.924e(b)(3) and 416.924(a)(3). Finally, to reflect the addition of new § 416.924b(b)(4), we have redesignated paragraph (c)(4) of the prior rules, "Domains," as paragraph (b)(5) in the final rules; we have also amended the age ranges referred to in the third sentence of the paragraph to reflect the foregoing changes. In addition, we have changed the heading of final paragraph (b)(5) to "Domains and Behaviors" because "responsiveness to stimuli" and "concentration, persistence, and pace" are not "domains" but "behaviors."

None of these revisions is intended to be a substantive change from the rules as we originally published them; rather, they clarify our intent so as to prevent any misunderstanding of our policy. The rules in final § 416.924b(b) are definitions of terms we use in other rules. From the outset, our primary intent in including these definitions was to provide a common set of terms for use with the new rules and to provide some guidance about the kinds of evidence of functioning one might expect to find (or seek) for children of different ages. By using words like "ordinarily" and "although" in these sections, our intent has been to make clear that the terms we use to describe functioning are not meant to be hard-and-fast rules, but only what we think would be the most likely information we would encounter in our case development.

Comment: One commenter said that the wording of § 416.924a(c)(4) of the prior rules (final § 416.924b(b)(5)) was ambiguous in its use of the phrase "development or functioning." This commenter also believed that language in the preamble to the publication of the prior rules that explained the all-inclusive nature of the domains and behaviors with respect to children's functioning should be included in the regulations.

Response: We adopted the comments. We deleted from the first sentence of final § 416.924b(b)(5) the phrase,

"development or", to emphasize that the domains and behaviors do, indeed, address functioning in all children. We added a new fourth sentence to explain that the domains and behaviors are intended to include all of a child's functioning, and a new fifth sentence to explain that all effects of a child's impairment(s) on daily functioning will be considered within the domains and behaviors.

Comment: One commenter who was concerned that we do not adequately provide for the assessment of children with physical impairments, requested that we add to the definition of "activities of daily living" a sentence that would indicate that activities of daily living may be more useful than developmental milestones for evaluating children with physical or nondevelopmental impairments.

Response: We believe that our revisions to § 416.924b(b)(2) and (3), described in a previous response, respond to the comment. With these changes, we now place greater emphasis on "activities of daily living" for children who are at least 3 years old. In further response to the comment, we have also revised the end of the second sentence of § 416.924b(b)(2) to indicate that such activities may also be used to evaluate children who are younger than age 3.

Section 416.924c—Other Factors We Will Consider

Comment: One commenter maintained that additional language and direction were needed to emphasize the relevance of other factors not enumerated in § 416.924d of the prior rules (final § 416.924c). The commenter said that, although former § 416.924d(a) of the prior rules (final § 416.924c(a)) states that the enumerated factors are "some" of the factors to be considered in an individualized functional assessment and "are not limited to" the factors enumerated, the section does not provide guidance about what those other factors might be. The commenter thought it "clear" that there were many other factors that could be considered, such as allergies and environmental limitations. The commenter referred us to a footnote in the *Zebley* decision, *Zebley*, 110 S.Ct. at 894, n.17. Four other commenters echoed this comment in the same or similar language, suggesting that we add certain risk factors to the section, such as the impact of socioeconomic factors on impairments; familial and environmental risks, including parental problems due to age, substance abuse, illness, or developmental disability; and

effects of homelessness, abuse/neglect, and malnutrition.

Response: We did not adopt the comment. The first sentence of final § 416.924c states clearly that we will consider all factors that are relevant to the evaluation of the effects of a child's impairment(s) on his or her functioning. The third sentence of the paragraph further states that the factors described in the section are some, but not all, of the possible factors that could be considered in the evaluation of a child's impairment(s). We included these provisions because it would not be possible to identify every factor to be considered in the evaluation of every child's claim; each claim presents a unique profile of impairment(s) and factors that are particular to that child.

In any case, we could not add the "factors" suggested by the commenters. Allergies and malnutrition would never be "other" factors because they are themselves medically determinable impairments; to call them "other" factors would be incorrect and confusing. The other suggestions described "risk" factors, which we cannot include in this rule or any other, as we explained in the preamble to the prior rules and will explain in more detail in our response below regarding the use of risk factors.

Finally, the first commenter's reference to footnote 17 in the *Zebley* decision was unclear. The footnote addressed "the rigidity of the Secretary's listings-only approach" and mentioned the following factors: pain, side effects of medication, feeding problems, dependence on medical equipment, confinement at home, and frequent hospitalization. *Zebley*, 110 S.Ct. at 894, n.17. The Court also later in the footnote mentioned "severe swelling, food allergies and fever," in a context which showed that it understood that these are medical findings. Aside from the fact that we no longer employ a listings-only approach, our rules plainly consider all of the factors noted by the Court at steps 2, 3, and 4 of the sequential evaluation process. Furthermore, our rules explicitly mention pain (which we address in the next three separate comments), side effects of medication, dependence on medical equipment, confinement at home, frequent hospitalization, and (as in the case of fever) chronic illness.

Comment: Several commenters were concerned about what they perceived to be a lack of any reference in our new rules to the evaluation of pain and other symptoms in light of the Supreme Court's criticism of the way in which we considered pain and other symptoms

under the listings-only approach we used to deny childhood disability claims. These commenters held that the statement in the preamble to the prior rules that the childhood regulations, "must be read in the context of * * * existing rules for determining disability" (56 FR at 5537) was inadequate because § 416.929, "How we evaluate symptoms, including pain," and Social Security Ruling 88-13, "Evaluation of Pain and Other Symptoms," did not mention children and were not written with children in mind.

Several commenters stressed that symptoms may be particularly difficult to evaluate in children because children may not be able to describe their own symptoms, may have other problems articulating their symptoms because of shame, embarrassment, or fear, may shy away from activities causing pain more than adults because they do not understand that pain can be overcome or controlled, or, if their symptoms had existed since birth, because they had no symptom-free frame of reference. One commenter said that these rules "never" mention symptoms.

These commenters stated that adjudicators are more likely to consider a child's symptoms if the childhood disability rules specifically require them to do so. Therefore, they recommended that we add a paragraph to § 416.924d of the prior rules (final § 416.924c) to include pain and other symptoms among the "other factors" we will consider. The new paragraph would address the consideration adjudicators are to give to allegations of pain and other symptoms in children.

Response: The comments have been rendered moot by an event that took place after the close of the comment period. On November 14, 1991, we published in the *Federal Register* final rules for the "Evaluation of Symptoms, Including Pain" (56 FR 57928). These new rules, which revise our previous rules in § 416.929 for the evaluation of pain and other symptoms, include specific reference to the evaluation of symptoms in determining a child's ability to function independently, appropriately, and effectively in an age-appropriate manner at each step of the childhood sequential evaluation process, and were prepared with the evaluation of children in mind.

It is not true that the prior rules "never" mentioned symptoms. Section 416.924a(b)(1) of the prior rules (final § 416.924(g)(1)) requires us to consider evidence of symptoms when we assess functioning, as do three of the paragraphs in § 416.924d of the prior

rules (final § 416.924c), and final § 416.926a(a).

However, we do agree with the commenters who pointed out that children may not be able to describe their own symptoms or may have difficulty articulating symptoms. Therefore, in response to the comments, we have added a new second sentence to § 416.928(a), "Symptoms," which states that we will accept as a statement of a child's symptoms the description given by the person most familiar with the child when the child is unable to adequately describe his or her symptoms. We have also made minor editorial changes to the prior text for context. In response to the comments, we have also added to final § 416.924(b) a statement that we will evaluate any limitations in a child's ability to function that result from symptoms, including pain. We have also added a statement to final § 416.924b(5) that the presence of pain or other symptoms can adversely affect functioning in the domains or behaviors. We continue to emphasize, however, that these childhood disability rules must be read in the context of all the other rules governing the evaluation of disability. Thus, every reference to an "impairment" and to "medical findings" carries with it the requirement to obtain evidence about and consider "symptoms, signs, and laboratory findings," as set forth in §§ 416.908, 416.928, and 416.929.

Comment: One commenter said that the Eighth Circuit in *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984), specifically held that we must consider allegations of pain and other subjective complaints. The commenter noted that *Polaski* required us to give full consideration to all evidence, including (1) the claimant's daily activities; (2) the duration, frequency, and intensity of pain and other subjective complaints; (3) precipitating and aggravating factors; (4) dosage, effectiveness, and side effects of medication; and (5) functional restrictions. Another commenter thought that the absence of a reference to pain in the childhood disability rules will be in violation of the law set forth in *Marcus v. Califano*, 615 F.2d 23, 27 (2d Cir. 1979). The commenter said that the *Marcus* decision held that, as long as an actual impairment had been established by medically acceptable clinical and/or laboratory techniques, the absence of objective medical evidence could not be grounds to reject or find not credible a claimant's statements as to the pain associated with that impairment.

Response: Revised § 416.929, "How we evaluate symptoms, including pain."

contains language that addresses the holdings in both of these cases, as well as others. Section 416.929(c)(3) of the regulations states that factors relevant to a claimant's symptoms include the five factors from *Polaski* cited in the comment, and several others. (See 56 FR at 57946.) The second commenter did not point to any language in the prior childhood rules which led to the belief that we would require children to establish the existence and severity of their symptoms through objective medical evidence. We do not know of any language in these rules that could have led the commenter to such a belief. In any case, revised § 416.929(b) of our rules provides that a person must have a medically determinable impairment which could reasonably be expected to produce the pain or other symptoms. The rule specifically states: "The finding that your impairment(s) could reasonably be expected to produce your pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of your symptoms." The fourth sentence of revised § 416.929(c)(2) further states: "* * * we will not reject your statements about the intensity and persistence of your pain or other symptoms or about the effect your symptoms have on your ability to work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner) solely because the available objective medical evidence does not substantiate your statements." (Both cites at 56 FR at 57945.)

Thus, we believe that these final childhood disability rules, which must be read in the context of our existing policies for the evaluation of pain and other symptoms, are not inconsistent with the circuit court rulings in either of the cited cases. Our rules make clear that, once an adjudicator determines that the individual has an impairment which is reasonably expected to produce the alleged symptoms, the adjudicator must consider all of the evidence relevant to the individual's alleged symptoms, even if the alleged symptoms are more severe or persistent than would be expected from the objective medical findings.

Comment: Two commenters suggested that we convene an "advisory panel" similar to the Pain Commission, or consult with multidisciplinary experts, to consider pain in children and how best to evaluate it and other symptoms in the disability determination process. They argued the need for such an effort because children may experience and

respond to pain differently than do adults.

Response: The recommendation goes beyond the scope of these rules. Nevertheless, we believe that the rules we published on November 14, 1991, are sufficient to guide adjudicators in the evaluation of pain and other symptoms in children. Section 416.929 of our rules contains a detailed discussion of our policies on the evaluation of pain and other symptoms. These policies include specific reference to the evaluation of symptoms in determining a child's ability to function independently, appropriately, and effectively in an age-appropriate manner and were prepared with the evaluation of children in mind. However, we agree with the commenters that children may experience and respond to their symptoms differently than do adults. Therefore, we have revised § 416.928(a) to expand the definition of our term "symptoms" to recognize the problems children may have articulating their symptoms. Further, our current policies and procedures provide for the use of pediatric experts, where indicated, for consultative examinations, including experts in pediatric pain, where appropriate and available. Finally, under the provisions of section 1614(a)(3)(H) of the Act, we will make reasonable efforts to ensure that a qualified pediatrician or other appropriate specialist evaluates each childhood case; such individuals are aware of the special problems of evaluating symptoms in children.

Comment: Several commenters urged us to include in § 416.924d of our prior rules (final § 416.924c) an explicit consideration of the impact of "risk factors" on a child's functioning. The commenters said that by "risk factors" they mean biological factors (e.g., low birth weight, neonatal seizures, anemia, recurrent infections, spinal, cardiac, and pulmonary abnormalities), health-related factors (e.g., inadequate treatment, lack of access to treatment facilities and therapy centers), and familial/environmental factors (e.g., malnutrition, homelessness, poor air quality, parental substance abuse, dysfunctional family environment, history of physical or sexual abuse). One commenter added that the conditions that manifest themselves due to risk factors can be physical or mental/emotional in nature.

The commenters said that the Supreme Court emphasized in *Zebley* that we must take into account all relevant factors in child claims (e.g., age, educational background, and circumstances), and the commenters

regarded risk factors among the circumstances to be considered. One commenter, who was not a pediatrician, said that "standard pediatric practice" takes risk factors into account in evaluating the severity of pediatric impairments, and that risk factors are indispensable in making longitudinal judgments about pediatric impairments. For example, the commenter thought that if a child has been abused it is relevant to consider that experience in order to arrive at a valid prognosis and to make informed decisions about duration.

The commenters noted several points we made in the preamble to the prior rules (56 FR at 5551). Most importantly, the commenters noted our position that a rule incorporating certain risk factors for children results only in a prediction of the possibility of future disability, and that to count certain factors again, after they have already been considered in the course of an equivalence determination or an individualized functional assessment, would be a double weighing of the same factors. The commenters asserted that elimination of express references in the regulations to "risk factors" is not necessary; rather we should provide language that avoids these problems. For example, one commenter said that many children with biological conditions that are not overt (e.g., spina bifida occulta, congenital heart problems) are already functionally impaired, at the very least by prophylactic orders from treating physicians; the commenter argued that consideration of risk factors may contribute to findings of current disability in these cases.

Some commenters also suggested that allowances based on predictions of disability *can* be appropriate. For example, one commenter said that, "without an express provision allowing the consideration of such risk factors * * * many claims in which the *current* level of functional impairment is not sufficient will be denied by lay adjudicators who may discount subtle but very serious underlying problems where consequences have yet to manifest themselves." (Emphasis in original.) One commenter maintained that the assumption made in the preamble to the regulations that risk factors may have an "observable, current impact" and, therefore, will be considered in the individualized functional assessment, is not supported by the language of the regulations. The commenter said that risk factors, "must be expressly laid out for lay adjudicators" and administrative law judges. To overcome our concerns about

the intrusiveness of inquiry into risk factors, as explained in the preamble to the prior rules, the commenter recommended that we limit consideration of risk factors, "to those that are objectively observed as affecting the particular child."

In addition to the commenters who proposed that we add a new paragraph to § 416.924d of our prior rules (final § 416.924c) specifically directing the consideration of risk factors, another commenter proposed that we add a new domain titled, "Abilities as affected by environment," to § 416.924c(a)(2) of our prior rules (final § 416.924d(c)) to address the ways in which a child's environment may contribute to, or decrease, the chance that a disability will improve.

Response: We did not adopt the comments. As we discussed in the preamble to the prior rules (56 FR at 5551), we do consider what the commenters called "risk factors" insofar as they affect the child's medical status and ability to function in an age-appropriate manner. As we explained in the preamble to the prior rules, many of the factors mentioned are covered in various ways in the rules. For instance, the so-called biological risk factors mentioned by the commenters (neonatal seizures, anemia, low birth weight, recurrent infections, and spinal, cardiac, and pulmonary abnormalities) as well as two of the familial/environmental factors (malnutrition and history of physical or sexual abuse) are, in these rules, "medically determinable impairments," or the effects of medically determinable impairments, or (as in the case of abuse) the cause of medically determinable impairments. To call these "other factors" or "risk factors" would only be confusing since we have always considered these "factors" in our determinations. Indeed, these "factors" can be disabling or be the cause of impairments that are.

The other categories of "risk factors" named by the commenters do not contribute to our determinations of disability except if one holds—as some of the commenters did and we cannot—that a child who is not currently disabled may be granted benefits based on a prediction of future disability. If a child has a disabling respiratory impairment, we will find the child disabled: We do not have to consider that the child lives in an environment with poor air quality or receives substandard medical treatment to make this determination, just as we would not use such factors to find the child not disabled.

As we explained in the preamble to the prior rules, these kinds of factors are

not relevant to a determination of disability. A child is either disabled or not, and we cannot say that the fact of homelessness or the fact that the child's parents abuse drugs can be additional factors that make the difference between a finding of "disabled" and a finding of "not disabled" without contravening the law. We do not agree with the assertion by one of the commenters that "standard pediatric practice" takes risk factors into account in evaluating severity, although we would agree that these factors are relevant to such issues as etiology, treatment plan, and prognosis.

Returning to the issue of "biological risk factors," we want to assure the commenters about spina bifida occulta and other hidden conditions that these rules already provide for the kind of considerations the commenters feared we would overlook. If a child with spina bifida is unable to engage in strenuous play because there is a real danger of paralysis, we would find that child to be medically limited in the ability to engage in strenuous play, even if the child is otherwise asymptomatic and able to do less strenuous activities. (This does not mean that we would find the child disabled; whether the child would be found disabled would depend on the extent to which the child is limited by his or her impairment.) Final § 416.924c(d) and (e) also address this subject: The example is of a child who has structured his or her life (i.e., by avoiding strenuous play) so as to minimize the chance of devastating injury. Also, as a general matter, final § 416.924(a) says, "When we assess your functioning, we will consider all information in your case record that can help us determine the impact of your impairment(s) on your physical and mental functioning"; similar directives are found throughout the rules. We require our adjudicators to develop and consider all impairment-related effects on function.

Thus, for purposes of assessing current disability, we believe the rules fully cover "risk factors" to the extent possible under the statute. Insofar as some commenters suggested that consideration of risk factors will allow us to predict future disability, we must repeat that allowances based on such predictions alone are contrary to the Act.

Comment: Three commenters focused on the importance of an impaired child's need for early professional care. The commenters said that many children have primary conditions which, if not treated with the necessary medical and allied professional interventions, will worsen and produce secondary deficits. Moreover, the child

might be tracked into an educational program more restrictive than would have been necessary had the child been given early and proper treatment. The commenters thought that, by recognizing and considering risk factors, we could make early intervention possible through the assistance of SSI and the Medicaid entitlement that accompanies SSI in most states.

Response: We do know of the importance of early intervention for children with impairments. However, we are not legally able to provide SSI eligibility for children who are not disabled within the time period covered by their application for benefits. There are programs designed to provide early intervention for children at risk (e.g., Part H of the Individuals with Disabilities Education Act (IDEA) and Headstart), but the Social Security Act's disability provisions do not allow us to pay benefits to children who are not disabled, but who may become disabled in the future.

Comment: One commenter recommended language for the first and second sentences of § 416.924d(b) of the prior rules (final § 416.924c(b)) to convey the idea that a child might have a chronic impairment(s) which causes periods of debility but which does not necessarily always require hospitalization or outpatient care. Other commenters were concerned that § 416.924d of the prior rules did not address the possibility of children with episodic impairments.

Response: We adopted the comment, but did not use the language the first commenter recommended. Instead, we added a new first sentence to the provision, which states: "If you have a chronic impairment(s) that is characterized by episodes of exacerbation (worsening) or remission (improvement), we will consider the frequency and severity of your episodes of exacerbation and your periods of remission as factors in our determination of your overall ability to function." We revised the next sentence (the prior first sentence of the paragraph) to state: "For instance, if you require repeated hospitalizations or frequent outpatient care with supportive therapy for a chronic impairment(s), we will consider this need for treatment in our determination." We then replaced the last sentence with two sentences that more clearly explain how we consider the need for treatment and the frequency of exacerbations in the disability determination. The revisions better convey our original intent for this provision, which was to give some guidance for the evaluation of children who have chronic, episodic

impairments that may not always limit their functioning (or may limit their functioning to a lesser extent during periods of remission) but who, on a longitudinal basis, may be so frequently and severely limited as to be disabled.

Comment: Comments and questions we received from three commenters pointed out that the language in § 416.924d(e) of the prior rules, "Adaptations," was unclear. One commenter wanted to know whether, following the language of the rule, we could conclude that a child with cerebral palsy who is nonverbal and unable to walk is not disabled if the child can communicate with an electronic device or a manual system and can get around in a motorized wheelchair. The commenter thought that the evaluation of these adaptations should be similar to the evaluation of the factors discussed in § 416.924d(d) of the prior rules, "Effects of structured or highly supportive settings." That is, the commenter thought we should consider the child's ability to function without an adaptation in a way comparable to the way we consider a child who functions better in a highly structured setting but is still impaired in age-appropriate settings. In a similar vein, a second commenter noted that even with the best device, a person who is otherwise nonverbal can only communicate somewhat better than not at all, but still not normally. This commenter suggested that communication devices could fall under the category of adaptations that may "impose additional limitations," or, alternatively, be listed as a self-care activity.

The third commenter thought our statement that some adaptations "may impose additional limitations that interfere with performance of age-appropriate activities" was problematic. The commenter pointed out that the examples we provided were of devices that "enable" a person to do an activity; they did not actually illustrate adaptations that would in themselves cause limitations. For example, the commenter noted that a child who required an adapted utensil would not be able to eat in the school cafeteria without the utensil, but would be able to do so with the utensil. The utensil itself does not impose additional limitations; rather, it enables the child to do something. Indeed, the commenter said that, if an adaptive device imposes a limitation that was not previously present (i.e., that was not part of the impairment itself) it would be necessary to reevaluate the appropriateness of the device.

Finally, one of the commenters said that the child who needs an adaptation

in order to function may depend upon Medicaid (through SSI) to obtain the adaptation. The commenter recommended that we clarify § 416.924d(e) to explain both the benefits to a child's functioning attributable to an adaptation and the potential loss of functioning attributable to the loss of an adaptation. The purpose of such clarification would be to ensure that children do not end up in recurring cycles of SSI eligibility and non-eligibility based on the absence or presence of such adaptations.

Response: We adopted the comments by revising § 416.924d(e) of the prior rules (final § 416.924c(e)) to make it clearer. Our intent in this rule was to evaluate the impact of adaptations essentially as the commenters thought we should. Children whose functioning is improved with an adaptation may function normally, or almost normally, but many children only function better, not necessarily independently, appropriately, and effectively in an age-appropriate manner. For instance, an ankle-foot orthosis may enable a child to walk independently, but the child may still be unable to run and engage in certain play activities; although the child's ability to function is increased, his or her abilities are still limited to some extent. Certainly, we consider a child who is unable to communicate without the assistance of an electronic device to be limited in the communicative domain, even though the device may enable the child to communicate to some extent.

We also agree with the third commenter that the examples of adaptations that may impose additional limitations did not illustrate the principle. They are not in themselves intrusive—as in the example of the special utensil, they enable children to function better, even if not "normally."

For these reasons, we revised the paragraph to state that some adaptations (such as eyeglasses and hearing aids) may enable a child to function normally, or almost normally, whereas others (such as ankle-foot orthoses, hand or foot splints, and other adaptations we formerly said could be intrusive) may increase functioning even though the child is still functionally limited. (We deleted the reference to "sleeping" because it was unclear.) In the second case, the extent of the limitation will, of course, vary from case to case. These revisions are not a change in our original intent, but the comments did enable us to better express our intent.

In clarification of the first commenter's concerns, we also note that children who must use wheelchairs or

who cannot produce speech by any means have impairments that meet or equal the listings. Therefore, we would not be concerned with evaluating the effects of these kinds of adaptations, which do not so much improve the particular function as substitute for it.

With regard to the suggestion that we employ a method similar to the rules for highly structured settings, we believe that the revisions accomplish the end the commenter had in mind, which was to recognize that children who use adaptations may still not be functioning independently, appropriately, and effectively in an age-appropriate manner. We do not believe that there is a valid comparison between a child's ability to function with or without an adaptation and a child's ability to function within or outside of a highly structured or supportive setting. A highly structured setting (such as a special class for children with behavioral problems) is an abnormal environment. In this situation, we need to determine how the child will function outside the setting—i.e., how the child will function in the settings that are normal to children of the child's age—because structured settings may mask how severely impaired—or typical—a child really is compared to other children.

Adaptations, on the other hand, may enable a child to function independently, appropriately, and effectively in an age-appropriate manner—i.e., they may enable the child to do normal activities in normal settings—or, at least, improve that ability. Knowing how the child would function without the adaptation does not really tell us anything about how the child can function. To take an obvious example, many children would have very serious visual impairments if they were not to wear glasses, but can see normally with glasses. However, a child who must use a built-up spoon or a rocker knife has augmented his or her functioning but is obviously still limited in the motor domain.

Comment: One commenter urged us, when applying the policy in § 416.924d(f) of the prior rules, final § 416.924c(f), concerning multidisciplinary therapy, to take into consideration the time commitment necessary for children with cystic fibrosis to perform chest therapy three or four times a day. Although these children may continue to attend school, performing the needed therapy several times a day can be very time-consuming and may seriously impede their ability to keep up with peers. Consideration of this factor may strongly influence a disability determination about these

children. Another commenter asked us to remove all references to multidisciplinary therapy and focus only on the time spent in treatment.

Response: We adopted the comments. In the fifth sentence of final § 416.924c(f), we deleted the words, "in order to go," from the opening clause of the prior language, "If you must frequently interrupt your activities at school or at home in order to go for therapy * * *," to convey the idea that the therapy may be given at home or school.

We adopted the second comment by changing the heading of final § 416.924c(f) from "Multidisciplinary therapy" to "Time spent in therapy". In addition, in the first sentence, we changed the phrase, "more than one kind of health care professional", to "one or more kinds of health care professionals" to indicate that even one kind of therapy can be very time-consuming. The second sentence now refers simply to "therapy," which may include multidisciplinary therapy. Nevertheless, this paragraph still provides for the situation in which each kind of therapy a child receives may not in itself involve much time but, cumulatively, the time spent in the various modes of therapy is significant.

Comment: One commenter was concerned about the statement in the second sentence of § 416.924d(g) of the prior rules (final § 416.924c(g)) that if a child attends school, "we will consider this evidence." The commenter was concerned about the situation in which we try, but are unable, to obtain evidence from the school.

Response: We adopted the comment. We revised the sentence to state that if a child attends school, we will consider this evidence when it is relevant and available to us. This revision more accurately reflects our policy and current development procedures and is consistent with the first sentence of the section, which explains that school records and information from people at school who know the child "may" be important sources of information. In some cases, such as allowances in which the child has an impairment that meets or medically equals a listing, or in which it is clear from the evidence that there is no limitation in the child's functioning at school, we may be able to make a decision without obtaining information from the school. The revision, therefore, covers the situations in which we try to get evidence from school but fail, and in which evidence from school is not necessary to reach a decision.

Comment: One commenter said that, since the law mandates that

developmentally disabled children be mainstreamed in regular classrooms, it is important to note in the childhood disability regulations that attendance in a regular classroom is not totally indicative of nondisability. We must also consider whether the child can function independently in that classroom in an age-appropriate manner.

Response: We have adopted the commenter's suggestion to add the word "regular" before the word "classroom" in the second sentence of final § 416.924c(g)(2). We also added the words "appropriately, and effectively" to the phrase "to function independently," in order to include all the characteristics of a child's functioning in a regular classroom that we would consider in our evaluation. We made a similar addition to final § 416.924c(g)(3), adding after "to function" the phrase, "independently, appropriately, and effectively."

Section 416.924d—Individualized Functional Assessment for Children

Comment: One commenter noted that § 416.926a(c), lists the individuals who have responsibility for making determinations of equivalence at each stage of the administrative review process. The commenter noted that we had omitted a corresponding section in § 416.924e stating the responsibility for the individualized functional assessment.

Response: We adopted the comment. We have added a new paragraph (b) to final § 416.924d to list the individuals who have the overall responsibility for the individualized functional assessment. The new paragraph does not contain any changes in policy, but only incorporates our policy as we have been applying it since we first published the prior rules. It is also consistent with the rules stating responsibility for equivalence in childhood claims and residual functional capacity assessments in adult claims. We adopted the first and third sentences of the paragraph from § 416.926a(c), with appropriate modifications to make it relevant to the individualized functional assessment. (In the first sentence, after "designee," we added the phrase, "of the Secretary." Since this phrase was missing from the first sentence of § 416.926a(c), we also added it to that sentence in the same place.) We adopted the second sentence from the third sentence of § 416.946, the provision in the adult rules setting out the responsibility for residual functional capacity assessments, again with minor revisions, to make the statement relevant to the evaluation of children.

Finally, we redesignated the following paragraphs because of the insertion of the new paragraph.

Comment: One commenter, whose particular concern is the emotional development of young children, made recommendations for improving the descriptions of the social development of newborns and young infants in § 416.924c(b) of the prior rules (final § 416.924d(e)), and the cognitive and social development of older infants and toddlers in § 416.924c(c) of the prior rules (final § 416.924d(f)).

Response: We adopted the language recommended by the commenter with minor amendment. However, in two instances, we used the language the commenter provided but placed it under different domains than were recommended. We also revised the sections of the rules for older children in a similar manner to maintain consistency among the rules and because we believe that the commenter's suggestions have applicability to older children as well. These changes are not substantive; they merely provide greater detail and accuracy to the descriptions we originally published.

In response to the comment, we revised the example of social development for newborns and young infants in § 416.924c(b)(4) of the prior rules (final § 416.924d(e)(4)) to state, " * * * your ability to form patterns of self-regulation, to form and maintain intimate relationships with your primary caregivers, and to exchange a variety of age-appropriate emotional cues and begin to organize intentional behavior * * *". In § 416.924c(c)(1) of the prior rules (final § 416.924d(f)(1)), we added the following language to the examples of cognitive development in older infants and toddlers: " * * * and by knowing what you want as illustrated, for example, by searching for a toy or asking for a special food * * *". We also made minor editorial revisions to the sentence to accommodate the new language.

We expanded the examples in § 416.924c(c)(2) of the prior rules (final § 416.924d(f)(2)), describing communicative development in older infants and toddlers by including most of the commenter's more precise language. The new language is, " * * * your ability to communicate your wishes or needs by using gestures or pretend play, and by understanding, imitating, and using * * *". The commenter had recommended that some of this language be used to describe the domain of social development, but we believe that it more accurately describes

communicative development as used in these rules.

In § 416.924c(c)(4) of the prior rules (final § 416.924d(f)(4)), we deleted the phrase, "and emotional bonding with," from the example of social development and revised the example to state, " * * * your ability to express normal dependence upon, and intimacy with, your primary caregivers, as well as increasing independence from them, to initiate and respond to a variety of age-appropriate emotional cues, and to regulate and organize emotions and behaviors * * * " We deleted "emotional bonding" because we agree with the commenter that this descriptor is generally applicable only to the youngest infants (i.e., those in the birth to age 1 category); the replacement language is more accurate and detailed.

In § 416.924c(c)(5) of the prior rules (final § 416.924d(f)(5)), personal/behavioral development, we added the phrase, "in responding to limits," after the phrase, "in adapting to your environment." This, too, was language the commenter suggested for the domain of social development; however, it comports more closely with our definition of personal/behavioral functioning, which concerns a child's learning and demonstrating self-control. In addition, in § 416.924c(d)(5) of the prior rules (final § 416.924d(g)(5)), we extended this same descriptor to preschool children, for whom learning self-control is also as important as it is for older infants and toddlers. In a related change, we deleted the phrase "self-control" from § 416.924c(d)(4) of the prior rules (final § 416.924d(g)(4)), social development of preschool children.

Although the foregoing comments were confined to children from birth to age 3, we believe that the suggestions made by the commenter about social functioning have applicability for other age groups and that, to maintain consistency among the rules, we made similar changes to the rules for older children. Therefore, to emphasize the continuity of social development across age groups, we have added parallel descriptors for preschool and school-age children and young and older adolescents in §§ 416.924d(g)(4) (for preschool children), 416.924d(h)(4) (for school-age children), 416.924d(i)(4) (for young adolescents), and 416.924d(j)(2) (for older adolescents). The descriptors refer to a child's ability to initiate age-appropriate social exchanges and friendships and to respond appropriately to social environments (i.e., to individuals and to groups) with increasingly complex interpersonal behaviors.

Comment: One commenter seemed pleased that we included responsiveness to stimuli for the youngest group of children, newborns and young infants in § 416.924c(b)(5) of the prior rules. However, the commenter recommended the addition of the phrase, " * * * and all sensory stimulation," or the addition of specific descriptions of the other kinds of sensory input that infants experience, i.e., vestibular or proprioceptive stimulation.

Response: In response to the comment, we clarified the descriptor. As written, § 416.924c(b)(5) of the prior rules (final § 416.924d(e)(5)) stated that a child's ability to respond appropriately to visual, auditory, and tactile stimulation was only an example of a child's responsiveness to sensory stimuli, rather than the definition of such responsiveness. Therefore, to make our intention clearer, we rephrased the provision to say: "Responsiveness to stimuli, i.e., your ability to respond appropriately to stimulation, e.g., visual, auditory, and tactile." Because the sensory responses in the descriptor are only examples, other kinds of sensory input (such as vestibular, proprioceptive) are included. Also, if we were to add a phrase including "all" sensory stimuli, the senses we mentioned would no longer be examples.

Comment: One commenter found commendable the inclusion of the factor of "adapting to the environment" in the personal/behavioral domains for older infants and toddlers in § 416.924c(c)(5) of the prior rules and for preschool children in § 416.924c(d)(5) of the prior rules. The commenter observed, however, that adaptation to the demands of the environment and the settings in which people function is a continuous process throughout life and a primary contributor to functioning at all ages. Therefore, the commenter recommended that we add similar language to the sections applicable to school-age children, young adolescents, and older adolescents.

Response: We accepted the comment and added the appropriate language to final §§ 416.924d(h)(5) (for school-age children) and 416.924d(i)(5) (for young adolescents). We also added a cross-reference at the end of § 416.924d(j)(1), for older adolescents, which incorporates by reference the descriptions of domains and behaviors in § 416.924d(i), the section for younger adolescents, and therefore accomplishes the same end.

Comment: Another commenter provided many comments concerning the area of communicative development

and functioning in children. The commenter recommended that we maintain continuity with our description of the communicative ability of children ages 1 to 3 years in § 416.924c(c)(2) of the prior rules—i.e., to eventually form two-to-four word sentences—by providing a description of the ability of children from age 3 to 6 years to form complete sentences in grammatical form. The commenter also noted that our descriptor for children age 6 to 12 years in § 416.924c(e)(2) of the prior rules described the ability to communicate pragmatically "or" conversationally. The commenter pointed out that by age 6 to 12 years a child should be able to communicate both pragmatically and conversationally; therefore, the commenter recommended that we use the conjunctive "and" rather than the disjunctive "or." Similarly, the commenter also recommended that the description of communication for young adolescents in § 416.924c(f)(2) of the prior rules should include the ability to express complex thoughts, with increased vocabulary, in a spontaneous and interactive manner.

The commenter also noted that in § 416.924c(d)(4) of the prior rules for children age 3 to 6 years, we included the ability to relate to a group, but we did not mention group relationships (except obliquely) in the communicative and social domains for subsequent age groups. The commenter also thought our descriptors varied from age group to age group. The commenter remarked that by the ages of 6 to 12, a child should be able to initiate communication in all communication environments and with all communication partners. Finally, the same commenter observed that the examples given to guide determination of an older adolescent's ability to do work-related activities did not include any statements about communication proficiency. The commenter recommended that we include communication proficiency in the factors to be considered regarding older adolescents.

Response: We adopted the comments. In final § 416.924d(g)(2) (§ 416.924c(d)(2) of the prior rules), we added the words, "using simple sentences in grammatical form," to the end of the descriptor of the communicative domain for preschool children. In final § 416.924d(h)(2) we changed the conjunction "or" to "and" in the three places in which it appeared, and added language for consistency with other rules, as already described. The descriptor now reads, " * * * your ability to communicate pragmatically * * * and conversationally (i.e., to

exchange information and ideas with your school classes, with peers, and family) in a spontaneous, interactive, sustained and intelligible manner * * *. In final § 416.924d(e)(2), (f)(2), (g)(2), (h)(2), (i)(2), and (j)(2), we added the words "spontaneous, interactive" or similar language to the descriptor of communication; even though the comment was directed only at final § 416.924d(i)(2), for young adolescents, we believe that it is relevant to all of the age categories.

To address the commenter's concerns about the ability of older children, as well as preschool children, to relate to, and communicate with, groups as well as individuals, we made the following changes: For school-age children, as suggested, we changed the phrase, "in your classroom," to "with your school classes" in the parenthetical statement in final § 416.924d(h)(2); and, in final § 416.924d(h)(4), we deleted, "to your siblings and parents or caregivers," and added the more precise language after the word "relate," "appropriately to individuals and groups (e.g., siblings, parents or caregivers, peers, teachers, school classes, neighborhood groups) * * *."

For young adolescents, in final § 416.924d(i)(2), beginning with the word "conversationally," we have replaced the remainder of the clause with, " * * * to converse spontaneously and interactively, expressing complex thoughts with increasing vocabulary in all communication environments (e.g., home, classroom, playground, extra-curricular activities, job) and with all communication partners (e.g., parents or caregivers, siblings, peers, school classes, teachers, other authority figures) * * *." We also revised the paragraph on social function, final § 416.924d(i)(4), to be consistent with other corresponding sections. Finally, in final § 416.924d(j)(2), we have added a new third sentence to address communication in older adolescents.

Comment: The same commenter also offered an additional comment concerning children who are nonverbal, particularly children with the physical impairment cerebral palsy. The comment was directed specifically at the descriptor for communicative development for preschool children in § 416.924c(d)(2) of the prior rules (final § 416.924d(g)(2)), which refers to a child's " * * * telling, requesting, predicting, and relating information * * *." The commenter noted that children with cerebral palsy who are nonverbal may be able to make some guttural noises and gesticulations that approximate interactive communication, but that are so limited

that they do not constitute effective, meaningful communication. The commenter was concerned that the language of our rules might be misinterpreted to include such output as effective functioning. The commenter, therefore, recommended that we add a reference to the development of interactive communicative skills, which would ensure that the more limited expression of nonverbal children not be construed as "normal."

Response: We adopted the comment in final § 416.924d(g)(2) by adding the word "interactive" to the descriptor. As with all functions described by these rules, it was always our intent that, fundamentally, any evaluation of a child's ability to communicate would have to consider its practical success as compared with age-appropriate norms, but we agree that the simple addition of the word "interactive" will make our intent clearer. Because we believe that the comment is relevant to other age groups as well, and for the sake of consistency among the rules, we have also made the same addition to the sections on communication for the other relevant age categories.

We would like to point out, however, that the commenter described a communication impairment that would meet the criteria of a listing; in fact, a child with cerebral palsy need not have as severe a communication impairment as described by the commenter to meet the requirements of our listings. Listing 111.07 may be satisfied by a child with cerebral palsy if the child also has a "significant interference with communication due to speech, hearing or visual defect"; the child need not be nonverbal. Moreover, children with other physical impairments that cause the level of speech impairment described by the commenter may meet Listing 2.09 if they are unable to produce by any means speech which can be heard, understood, and sustained. Nevertheless, there will be children who have impaired communication abilities that are not of listing-level severity, and we want to ensure that the descriptors for evaluating communication are complete.

Comment: One commenter was aware that we had created charts for our manual instructions to display the functional descriptors in § 416.924c in prior rules. The commenter noted that the charts include "conceptual growth" under the cognitive domain for young adolescents, a descriptor that was not in the regulations section. The commenter suggested that we add it.

Response: As suggested, we added the term, "conceptual growth," to final § 416.924d(i)(1), the cognitive domain for young adolescents.

Comment: Several comments were made concerning the discussion of functioning of older adolescents in § 416.924c(g) of the prior rules (final § 416.924d(j)). Two commenters noted that functional domains and behaviors and their descriptors were not included for this age group. Another comment recommended that we delete the reference to remembering "short instructions" in the discussion of the school activities that would be considered as evidence of an older adolescent's ability to function in a job setting because "there is more to employability than just taking 'short' instruction." Finally, one commenter thought that there was an implicit presumption in § 416.924c of the prior rules that older adolescents without impairments function like adults. The commenter observed that in some domains, older adolescents may function in a manner similar to that of adults, but in areas involving cognitive skills and judgment, their functioning is less similar to that of adults.

Response: We adopted the comments about adding a reference to the functional domains and behavior for older adolescents by adding at the end of final § 416.924d(j)(1) (§ 416.924c(g)(1) of the prior rules) a cross-reference to the descriptors in final § 416.924d(i)(1)-(5), which are also applicable to older adolescents. For consistency throughout the rules, we also added statements to the first sentences of final § 416.924e(d)(2) and (3) referring to the domains. We also changed "short instruction" to "simple instruction," which is not only more accurate, but consistent with the description of basic work-related activities in other regulations sections (e.g., § 416.921).

Finally, we do maintain, as stated in final § 416.924e(d)(1), that children aged 16 to 18 who do not have impairment-related limitations are ordinarily expected to be able to do the kinds of physical and mental activities that are expected of persons who are at least 18 years old. We believe that this is a reasonable policy because it is consistent with current knowledge about the abilities of 16- and 17-year-olds as compared with 18- and 19-year-olds. For the same reason, we have articulated the principle in final § 416.924a(d)(4) that older adolescents generally share with the youngest adults (i.e., 18-years-olds) the same abilities to adapt to work-related activities despite a severe impairment(s).

Comment: Six commenters submitted comments that discussed in identical or similar language the efficacy of these rules as they apply to the evaluation of children with physical impairments. Several of these commenters said that, although the domains of functional assessment in §§ 416.924c and 416.924d of the prior rules (final §§ 416.924d and 416.924e) are reasonable for determining developmental disability, they are insufficient for determining physical disability. They also said that the regulations, in general, fail to provide appropriate guidance for the evaluation of physical impairments. One commenter said that 30 percent of children suffer from physical impairments, many of which do not have much effect on development.

One commenter thought that the problem was that we had borrowed developmental terms from the pediatric community that have received meanings which are used only in certain contexts. The commenter said that, because we were implicitly altering the meanings of these terms and using the concept of "domains" as an all-inclusive framework, we were increasing the potential for confusion and making our adjudications more difficult.

Response: We disagree with the commenters' view that the domains of functional assessment are not adequate for the purpose of evaluating physical disability in children.

We first repeat the definition of "domains" in final § 416.924b(b)(5), "Domains and Behaviors," in these final rules:

The terms "developmental domains," "functional domains," and "behaviors," which we use when we perform an individualized functional assessment, refer to broad areas of development or functioning that can be identified in infancy and traced throughout a child's growth and maturation into adulthood. The domains describe the child's major spheres of activity—i.e., physical, cognitive, communicative, social/emotional, and personal/behavioral. In addition, there are certain areas of behavior that are applicable to specific age categories (i.e., responsiveness to stimuli; concentration, persistence, and pace). In these regulations, the term "developmental domains" is generally used when we discuss younger children * * * ; the term "functional domains" is generally used when we discuss older children * * * .

This provision shows that the distinction between "developmental domains" and "functional domains" has reference only to age groups, not to the nature of the child's impairment, as the commenters seemed to have assumed.

More importantly, the provision clearly states that the domains applicable at any age describe the child's functioning, the child's "major spheres of activity." Thus, they encompass and reflect all that a child can and cannot do given his or her impairment(s), regardless of the nature of the impairment; they are not confined merely to "development."

From the perspective of these rules, we think the commenters draw an artificial distinction between children with "developmental disabilities" and children with "physical disabilities" which these rules neither state nor imply. The commenters seem to believe that there is a distinction between conditions that may inherently limit or delay a child's "development" (e.g., mental retardation, cerebral palsy) and those that supposedly do not limit development but may limit a child's functioning (e.g., asthma, seizures, rheumatoid arthritis).

We do not maintain such a distinction in these rules because we believe that it would be artificial in the context of our program and that it has several flaws. The most obvious flaw is that many children who are regarded as "developmentally disabled" by other public laws and agencies have physical impairments as the basis of their developmental disabilities. Another flaw is in the implication that children with physical impairments are not affected in their development by their physical impairments. Certainly, all children with physical impairments cope differently with their impairments, depending on their individual capabilities and temperaments, and the nature of external support from their environments. But this is a highly relative matter, and it is likely that the development of all physically impaired children is affected to one degree or another.

The most important flaw in the distinction, however, is the implication that children with "developmental disabilities" and those with "physical disabilities" are somehow essentially different from one another—as if the things they are expected to do as children are altogether different. This is not the case. All children are expected to do the same things in childhood: To play, to learn to walk and talk, to learn to read and write, to live with adults and children, to learn to care for themselves, to become task-oriented. How well children do these things depends on their strengths and weaknesses, their skills and deficits, their abilities and limitations. However, because all children are expected to do these things, we evaluate each child

from the perspective of the things that all children are expected to do.

Moreover, this is the perspective from which the Supreme Court directed us to evaluate functioning in children, to make "(a)n inquiry into the impact of an impairment on the normal daily activities of a child of the claimant's age—speaking, walking, washing, dressing, and feeding oneself, going to school, playing, etc. * * * ." *Zebley*, 110 S.Ct. at 896. The Court did not direct us to consider developmentally disabled children on the one hand and physically disabled children on the other.

These rules, therefore, require an evaluation of what the child is doing in all the major domains of functioning and behaviors appropriate to the child's age: Physical, cognitive, communicative, social/emotional, etc. This determination is made irrespective of the nature of the child's impairment because the point is to determine the actual outcome of the impairment; that is, the impact on the child's functioning in practical, specific terms. For example, a child who has difficulty breathing and who experiences shortness of breath, or a child with limited strength and endurance may have difficulty keeping pace with peers at school; in such a case, a limitation in the area of concentration, persistence, or pace would be indicated. If a physical impairment causing a motor deficit limits a child's ability to engage in outdoor play, playground games, or sports, we would indicate some limitation in the motor domain. A child who has problems with eating, or who is susceptible to infection or other chronic illness, may be weakened by the condition or may experience pain; the functional effect of these symptoms could be manifested in diminished ability to concentrate, persist, or maintain pace, in social functioning, in motor functioning, or in any of the other domains or behaviors, depending on the specific impact the impairment has on the specific child. A child with a fine motor impairment that limits the ability to perform age-appropriate self-care activities (such as dressing), would have a limitation in the personal/behavioral domain. A child who has difficulty seeing or hearing may have problems in one or more of several functional areas, including cognitive, communicative, motor, social, and personal/behavioral. Thus, a physical impairment could cause limitation in any of the domains and behaviors considered in the evaluation of childhood disability and would be evaluated according to its impact on the child's functioning.

Finally, we do not believe that our use of the domains as an all-inclusive

framework would confuse our adjudicators. Any programmatic approach to evaluating disability—in a child or adult—must necessarily be tied to a scheme of some kind that will allow adjudicators to organize information about how the impairment affects the person. We know from the past year-and-a-half of implementation experience that these rules have been effective and fair. The rules have provided adjudicators a means of organizing the information they obtain about child claimants from medical and nonmedical sources, employing functional domain terminology with which they already had some familiarity because we adopted it from the childhood mental listings. As we have said, we also believe that the rules provide a means of evaluating the effects of all impairments in all children, so it is also fair to the children. For this reason, we believe that we have made a difficult and complex task more manageable and less confusing than it would have been without such a framework.

Comment: One commenter suggested that we should add provisions that allow for nondevelopmental factors to be assessed outside the domains. The commenter also stated that, to the extent that domains are used in a determination, we should fully explain how they are being used, and that whenever examples are given in the rules, we should provide examples of physical impairments as well as developmental and mental disorder examples. The commenter also believed that the domains and criteria for age-appropriate activity should be revised to be more representative of children with physical impairments. For instance, this commenter and one other recommended that we revise § 416.924c(a)(2) of the prior rules (final § 416.924d(c)) to state: "The following are domains of development, functioning and some of the specific behaviors and capacities that should be addressed in an individualized functional assessment * * * (viii) breathing; (ix) eating and eliminating; (x) seeing and hearing; (xi) ability to resist disease and function in the physical world (i.e., cope with the environment); (xii) strength and endurance; and (xiii) other physical and mental functions considered a part of normal function." The two commenters also recommended changes in § 416.924c (c)(5), (d)(5), (e)(5), and (f)(5) of the prior rules to insert the word "functioning," and a new sentence for § 416.924e of the prior rules to convey the idea that the domains were not all-inclusive.

Response: For the most part, we have not adopted the commenters' suggestions. We believe our response to the previous comments explains why it is unnecessary for "nondevelopmental factors" to be assessed outside the functional domains and behaviors that we use to assess children's impairments. We do not believe it is necessary for adjudicators to explain how the functional domains and behaviors are being used in any particular determination, because adjudicators use them in the manner described in the previous response and as appropriate to the case. We explain elsewhere that we do not believe examples are universally helpful to adjudicators because of the limitations inherent in generalizing an example to any specific case. However, in response to the commenter, we have added an example of a physical impairment to final § 416.924e(c)(2)(i). We have not revised the functional domains and behaviors to be "more representative of children with physical impairments" because, as we explained in the previous response, we do not distinguish categories of children in terms of the nature of their impairments but, rather, we evaluate all children in terms of the functional impact of their impairments.

In response to the commenter who recommended that we add several "specific behaviors and capacities" to the functional domains and behaviors in these rules, we do not believe it is appropriate to add capacities such as breathing, eating, eliminating, and strength as though they were separate and apart from the domains of functioning or specific behaviors that we consider for each age group. The domains and behaviors already take these limitations and impairment manifestations into account, not so much in terms of what they are, but in terms of how they affect the child's ability to function "independently, appropriately, and effectively in an age-appropriate manner" as shown by the things that the child actually does. Moreover, in response to the commenter who asked us to convey that the domains are not all-inclusive, we would say that, by definition in these rules, the domains and behaviors are all-inclusive and are intended to cover every possible activity a child may have. Finally, we could not adopt the other proposed language change in § 416.924c (c) through (f) of the prior rules (final § 416.924d (g) through (i)) because "functioning" is not distinct from "adapting": All children with all impairments (including physical) must adapt to their environments in order to

function as effectively as possible in those environments.

Comment: One commenter who thought that the use of "domains" did not address physical impairments said that the determination of physical disability seems central to the notion of disability for adults and is clearly relevant to the functional assessment available to adults.

Response: We believe that we have made it clear that we agree with the comment and that these rules accomplish the same thing for children. The evaluation of disability in adults is more readily and observably divisible into physical and mental disability because the world of work activity is divisible into physical functions and mental functions, and the workplace is the context against which we must evaluate adults. The rules for the evaluation of disability in children are, in effect, more broadly based than the rules for the evaluation of adults because we must consider children in the context of their entire lives, 24 hours a day. This does not mean that the evaluation of physical disability plays a lesser role in the determination of disability for children. It means that the limitations imposed by a child's physical impairment(s) are evaluated in terms of the child's activities in all areas of living. This means that we assess a child's physical impairments in terms of all of the domains and behaviors and the myriad functions they subsume.

Comment: Two commenters observed that, even when a child's physical impairments do impede development, physicians and others are not accustomed to evaluating the impairments in developmental terms. For example, a child missing several fingers would not be described as having the fine motor developmental skills of a child half her age; she would merely be described as missing several fingers. Similarly, the impairments of children with asthma or cystic fibrosis are not described in developmental terms. Although these children may have marked restrictions in daily activities, " * * * most health care professionals consulted will not describe limitations in those terms." Therefore, these commenters thought that, if we were going to use a "developmental model" for the assessment of impairment in all children, we must explain this decision to the public, the medical community, and the consulting examiners we employ, and must ask for such "developmental appraisals."

Response: As we have explained, we do not use a developmental model. What we need to know is how the

impairment(s) specifically affects the child's functioning, information that we will obtain from medical and nonmedical sources, for instance, how the child missing fingers on one hand is able to play, dress herself, feed herself, and so on. We will compare this information with the activities that are age-appropriate for the child and determine whether the child's impairment(s) substantially reduces his or her ability to do those things that are age-appropriate.

We should add, however, that the evidence we receive in documentation of the claims of young children (from birth to age 3, 4, or 5) often contains the results of screening and assessment devices used by pediatricians, early child development specialists, and therapists to evaluate a child's condition and to plan appropriate interventions. These measures of a child's growth and progress are often expressed in developmental terms, i.e., as a proportion of the child's chronological age. Even when a child has a physical impairment, a pediatrician, therapist, or other health care professional may evaluate the child in "developmental" terms, depending on the nature of the impairment and the purpose of the evaluation. For example, if a 3-year-old child who was missing several fingers required therapeutic intervention, an occupational therapist would be interested in assessing the extent (in terms of age level) of the child's motor skills in order to match the child's skill level with appropriate interventions.

Section 416.924e—Guidelines for Determining Disability Using the Individualized Functional Assessment

Comment: We received many comments stating the same four recommendations reflecting a general concern that the guidelines for the individualized functional assessment and accompanying examples might be applied rigidly or mechanically. The commenters feared that, even though we state that the examples are not all-inclusive, there may be a tendency to use them as hard-and-fast rules. The first of the four recommendations had several aspects. It was suggested that we add a provision that requires adjudicators to demonstrate flexibility in decision making by taking into account all relevant evidence before rendering a final individualized functional assessment. Four commenters suggested that the regulations should require adjudicators to demonstrate their application of the individualized functional assessment rules in a descriptive narrative or findings of fact. Several commenters

also suggested that we include language from the preamble to the prior rules about the "initial guidelines" in the rules themselves.

Response: We adopted the comment about strengthening the rules that require consideration of all the evidence. The second sentence of final § 416.924d(b) now states: "This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary." As we explained in an earlier response, we copied this sentence from § 416.946. This provides consistency between the adult and childhood rules while, at the same time, it makes the statement that the commenters requested.

We also partially adopted the comment that asked us to include language from the preamble throughout the rules, although we did not include the specific statements some of the commenters recommended. We identified language in the preamble (56 FR at 5542) that we believe clarifies two statements in final § 416.924e(b). In the preamble to the prior rules, we explained that the guidelines for individualized functional assessments are based on the rules and principles already present in the listings for childhood mental disorders. One of those principles is that a finding of "marked" limitation is a finding about how a child is functioning in a developmental or functional domain. Our guidelines therefore state, in the manner of 112.00C of the listings, that "marked" and "moderate" do not connote a particular number of restricted activities or functions, but the overall degree of restriction or combination of restrictions. To emphasize our original intent that this means the overall degree of restriction in a developmental or functional domain or behavior, we have added the phrase, "in a domain or behavior," to the last two sentences of final § 416.924e(b). We made similar additions in final § 416.924e(b)(1), (c)(2), and (d)(2).

We did not adopt the comment that asked us to require in the regulations that adjudicators prepare a narrative rationale of the individualized functional assessment. This is because we believe there is sufficient indication in the regulations of the requirements of a determination or decision. For instance, with respect to the individualized functional assessment step, final §§ 416.924d(a) and

416.924c(a) provide that we will consider all information in the case record that is relevant to the claim and all of the factors set forth in §§ 416.924 through 416.924c, the rules that describe the steps of the childhood sequence, the effects of age, and other factors. Other rules, such as those at §§ 416.927 (evaluating medical opinions) and 416.929 (evaluating symptoms, such as pain) also provide specific requirements for the evaluation of cases involving those factors. In addition, subpart N of part 416 of 20 CFR provides rules directing the contents of notices of initial and reconsideration determinations, and hearings and Appeals Council decisions. The more detailed instructions for practical implementation of the rules properly belong in manual instructions, just as they are for all other issues, such as the adult residual functional capacity assessment. In fact, our manual instructions already require the kinds of narrative explanations and findings of fact requested by the commenters.

Comment: The commenters' second recommendation was that we repeat in the paragraphs illustrating disability for each age group the cautionary language from the third sentence of § 416.924e(a): "The examples in this section are only guidelines to illustrate severity and are not all-inclusive rules."

Response: We adopted the comment. In fact, we already make a similar statement in final § 416.924e(d)(1)(ii), the section for older adolescents: "As in the examples for younger children, the guidance for evaluating older adolescents is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all of the regulations addressing childhood disability." (The prior rules stated that the guidance was "not intended to be all-inclusive, or a standard by which all cases must be judged." We deleted the words, "all-inclusive, or," because they are redundant of the remainder of the statement, that the guidance is not "a standard by which all cases must be judged." However, we have still retained the language in final § 416.924e(a).)

In response to the comments—and because the same guidance is applicable to the evaluation of children from birth to the attainment of age 16—we have now added these two sentences (modified to be appropriate to their respective sections) to final §§ 416.924e(c)(1), "Young children," and 416.924e(c)(2), "Older children and young adolescents."

Comment: The third and fourth recommendations were that we commit to conducting special monitoring of the use of the individualized functional assessment rules, and that we conduct "adequate" training of all appropriate personnel to ensure proper implementation of the guidelines.

Response: We have conducted adequate monitoring and training on the implementation of the new childhood rules, as the commenters recommended. For example, during the first few months after implementation we used an "Early Implementation System," which was a special, multilevel review to ensure that all of the new childhood rules were properly implemented. Since that time, we have continued to carefully monitor the use of the rules at the State Agency, Regional Office, and Central Office levels. Moreover, the training we conducted was one of the most extensive training efforts we ever mounted, and was accompanied by a large student training manual. Since completion of the training, we have also answered in writing questions we have received from the field; the questions and answers are provided to all field personnel, not only those who asked the questions. We also share information about our actions on case reviews with all adjudicators as part of our ongoing commitment to education and consistency.

Comment: Some commenters said that the specific "mathematical" definitions of "marked" and "moderate" limitations for very young children in final § 416.924e(b)(1) do not conform with the idea that the rules are meant to be "guidelines" and a "framework." They were concerned that these definitions have the potential of being applied rigidly and mechanically by disability examiners, who may rely entirely on various test results. One commenter asked what evidence we would use to make these very refined judgments regarding a child's functioning at $\frac{2}{3}$ to $\frac{3}{4}$ of chronological age. A few commenters remarked that it was not clear what the measurable difference in a child's social functioning is between $\frac{2}{3}$ and $\frac{3}{4}$ of chronological age, or how this narrow gap would be determined in individual cases.

To address these concerns, one group of commenters recommended that we delete the arithmetical definitions of "marked" and "moderate" for very young children and redefine them in qualitative terms. Another commenter, questioning whether tools exist for such precise numerical determinations, recommended that we include the word "approximately" when referring to the

numerical measures throughout the rules.

Response: We did not adopt the comments. We do not think that the use of numerical measures of developmental milestones threatens the flexibility inherent in the individualized functional assessment process. The examples in the guidelines that use fractions of chronological age to describe a child's functioning do not represent the results of a single test or, indeed, of test results alone, and the determinations we make based on the guidelines do not rest on test results alone. The results of developmental tests are only one component in the whole assessment of how a young child is functioning, which includes not only quantitative evidence but also qualitative findings based on clinical observations and conclusions.

With regard to the comment asking what evidence we could use to make refined judgments about a child's achievement of developmental milestones, there are tests that measure this functioning. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, and the Revised Stanford-Binet. Development is sometimes expressed in test results as a developmental quotient (DQ), or the relation between developmental age and chronological age as determined by specific standardized measurements and observations. With regard to the comments about the precision of the measurements, there are valid, reliable tests of the attainment of developmental milestones, such as those mentioned above, that are generally used in clinical settings for the determination of the developmental status of infants and toddlers. We believe that our pediatricians and other specialists in childhood medicine will be able to make the kinds of refined clinical judgments required of these cases. The guidelines reflect the kinds of evidence that we frequently find in the record.

Comment: Some of the foregoing commenters noted that the regulations provide only two examples of how the terms "marked" and "moderate" are to be applied for children aged 3 to 16. One commenter requested that we add to final § 416.924e(c)(2) an example of a physical impairment(s) that does not meet the listings but is disabling because the existing two examples are both of mental impairments. Several commenters also recommended that we include in the regulations additional examples of application of the guidelines to specific patterns of childhood dysfunction.

Response: In response to the comments, we have added an example of a physical impairment to final § 416.924e(c)(2)(i). Beyond this, we decided not to provide additional examples. We believe that any example we might devise would have to be as clear and unambiguous as we could possibly make it; and we believe that such an example would have to be so obvious that it may not provide appropriate guidance. Moreover, we question whether there are "specific patterns of childhood dysfunction" that lend themselves to illustration. In any particular child there may be a specific pattern of dysfunction, but that pattern is unique to that child; it would be hazardous to generalize an example, on the basis of which someone might overlook or misinterpret evidence that is peculiar to another child's claim.

Comment: One commenter had difficulty understanding the third sentence in § 416.924e(c)(2). The commenter said that, instead of saying that the term "moderate" and the overall level of disability at less than the listing level are "based on comparison with" listing level severity, we should say they are "established in relation to" the descriptors of listing-level severity. The commenter also suggested that we add a new fourth sentence stating that the term "moderate" signifies a lesser level of severity than the term "marked."

Response: We did not adopt the comments. We believe the phrase, "based on comparison with," in the third sentence of final § 416.924e(c)(2) conveys our intent more clearly and accurately than does the suggested alternative phrase, which we assume was merely an editorial suggestion and was intended to mean the same thing. We did not adopt the commenter's second recommendation because we believe the general reader of the rules—and, certainly, our adjudicators—will have no difficulty understanding that a "moderate" limitation of functioning is less severe than a "marked" limitation.

Comment: One commenter wanted us to delete the word "simple" from "simple instructions" and "simple decisions" in § 416.924e(d)(2) because employability entails more than the capacity to handle simple instructions or decisions.

Response: We did not adopt the comment because the capacity to handle simple instructions is a basic work activity, as set forth in § 416.921(b)(3).

Comment: One commenter thought that there was a new term, "a substantial loss or deficit of capacity," in § 416.924e(d)(4) and wondered what it meant. The commenter said that if

"substantial" means "moderate," we should employ that term since it is already in use. If "substantial loss or deficit" has a different meaning, we should explain and justify it.

Response: We adopted the comment. The phrase, "substantial loss or deficit of capacity" is not a new term but a logical extension of the basic definition of disability as it pertains to older adolescents. That definition, in § 416.924(a)(3), states, in pertinent part, that disability means, " * * * your impairment(s) must substantially reduce your ability to * * * acquire the skills needed to assume roles reasonably expected of adults * * *." In final § 416.924e(d)(4), we take the phrase "substantially reduce" from the definition in § 416.924(a) and state more explicitly how an older adolescent might experience such a substantial reduction in the ability to acquire the skills needed to assume roles reasonably expected of adults. Thus, by "loss" we mean that an older adolescent may have had the capacity for work-related physical and mental activities but have lost that ability through traumatic or degenerative impairment; by "deficit" we mean that the older adolescent may not have had such capacity at any time because of physical or mental deficits ensuing from a preexisting impairment, such as a congenital or developmental disorder. For this reason, we will continue to use the phrase in the rules.

Since the term "substantial" comes from the definition of disability in § 416.924(a)(3), it does not mean "moderate"—it equates with disability. We agree, however, that the section does not give the level of guidance that the preceding sections do for younger children about what it means for an older adolescent to be disabled. Therefore, in response to the comment, we have revised § 416.924e(d)(4) to incorporate guidance from our manual instructions that implement this section. In new subparagraph (d)(4)(i) of final § 416.924e we state that the term "substantial loss or deficit" is not a precise number, percentage, or other quantitative measure. Then, in new subparagraph (d)(4)(ii), we explain that the term means that an older adolescent is unable to meet the basic physical demands of at least "sedentary" work, as that term is defined in § 416.967; or the basic mental demands of "unskilled" work, as defined in § 416.968; or has an impairment(s) that would severely limit the potential occupational base of a person age 18–45 and would justify a finding of inability to perform other work even for a person with favorable age, education, and work experience, as set out in appendix 2 to

subpart P of part 404 of 20 CFR. The last clause, especially, recognizes children with combinations of impairments and with nonexertional limitations, which may result from many mental and physical factors, including pain.

For consistency with these revisions, we have also added to the cross-references in the second sentence of final § 416.924e(b)(3), cross-references to §§ 416.968 and 416.969a ("Exertional and nonexertional limitations").

Our justification for this policy is in final § 416.924e(d)(1), which we have not revised. In paragraph (d)(1) we provide that children aged 16–18 are closely approaching adulthood and can be evaluated in terms that are the same as, or similar to, those used for the evaluation of the youngest adults; i.e., those in the age 18–45 category (see § 416.963(b)). We go on to state that older adolescents who do not have impairment-related limitations are ordinarily expected to be able to do the kinds of physical and mental activities of individuals who are at least 18 years old.

Section 416.926a—Equivalence for Children

Comment: We received only favorable comments about our addition of the new policy that revises the concept of "equivalence to the Listing of Impairments" in SSI children's claims to include the concept of "functional equivalence" to the listings. However, we received many suggestions for clarifying and augmenting the explanations of the new rules. The commenters thought that, because the functional equivalence policy was complex and unfamiliar, it was important that we provide as much detail as possible in the regulation section itself so that all adjudicators would understand and apply the new rules in the same way. Several commenters also said that § 416.926a should explain the "thought processes" an adjudicator could employ to make a finding of functional equivalence; otherwise, the functional equivalence principle might be under-utilized. One suggestion was that we incorporate into the rules the more detailed instructions in our operating manuals and training guides. One commenter suggested that we add subheadings of "medical equivalency" and "functional equivalency," to highlight the differences and the novelty of the functional equivalence policy.

Response: Although we did not adopt all of the comments, we have adopted some of them, as we explain in several of the responses below. We did not adopt the suggestion that we incorporate

the longer explanations of the principles underlying "functional equivalence," which are now contained in our operating manuals and various training guides. In our view, these lengthy explanations are not substantive rules and should not be included in the Code of Federal Regulations.

We did not adopt the comment suggesting that we add subheadings that would distinguish functional equivalence from medical equivalence. We do not believe, in light of our experience using the rules, that it is necessary to highlight the approach, since our adjudicators are now well aware of its existence and have been trained in how to apply the policy. Moreover, we are concerned that if we were to highlight the functional equivalence policy in this way we might create the mistaken impression that "functional equivalence" is another step in the sequential evaluation process, distinct from and subsequent to the third, "meets or equals" step. In fact, the policy of functional equivalence is only a facet of the third step of the sequence, and provides another way in which to determine whether an impairment or combination of impairments is equivalent to any listed impairment.

Comment: Three commenters provided comments about the second sentence in § 416.926a(a) which reads as follows:

While all possible impairments are not addressed within the Listing of Impairments, within the listed impairments are all the physical and mental functional limitations, i.e., what a child cannot do as a result of an impairment, that are considered severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner.

Two commenters said that there was no "documented basis" for this claim. The commenters repeated that many functions, such as "breathing, eating, eliminating, immunity, strength and endurance," were not dealt with in functional terms that capture all limitations. The third commenter thought that the sentence was confusing because the listings do not contain all functional limitations.

Response: With regard to the first comment, we have already explained in our responses to the comments about § 416.924d our policy that the kinds of physiological functions the commenter lists (breathing, eating, etc.) can and must be translated into the kinds of activities that children do. These activities are in fact covered by the domains we have provided. We, therefore, disagree with the comment.

All listing-level physical and mental functional limitations are in the listings because of the "paragraph B" (and "C") criteria of the childhood and adult mental disorder listings and Listing 112.12 in the childhood mental disorder listings. These sections consist of listing-level functional criteria stated in terms of the same domains of functioning we use in the childhood disability rules, the same domains that, as we have already explained under the comments regarding § 416.924d, do include all of the functions performed by children. As we noted in the preamble to the prior rules (56 FR at 5544), aside from the many specific functional limitations stated in the listings (such as deafness or marked impairment of ambulation), the functional criteria of the mental listings provide "another, comprehensive way to look at the functional effects of impairments." These criteria demonstrate a way to consider the practical effects on functioning of any impairment or combination of impairments in terms of adaptive activities, socialization, personal/behavioral functioning, and so on.

Comment: Two commenters suggested that we revise the rules to acknowledge that both the listings and the equivalence examples were limited, since both consist of "a list" which is inherently incomplete and could be out-of-date. One commenter suggested language for § 416.926a(a).

Response: We did not adopt the comment because we do not agree that the listings are inherently incomplete for the narrow purpose of establishing functional equivalence, even though we do agree that the listings do not list every possible diagnosis or combination of diagnoses a person might have. Moreover, we continually strive to ensure that the listings are up to date and reflect current medical knowledge. However, if a listing may be out of date, one of the purposes of our equivalence policies is to deal with the situation. For instance, equivalence permits us to substitute more up-to-date imaging techniques for x-ray findings in the listings. Nevertheless, we do not maintain that the list of examples of functional equivalence is an all-inclusive list. Rather, as we explain in the responses that follow, we have made several revisions to § 416.926a that are designed to remind our adjudicators not to limit their evaluations to the examples found in final § 416.926a(d).

Comment: One commenter said that the equivalence regulation makes no mention of symptoms or the effects of medications. The commenter noted that the Supreme Court had specifically

criticized our prior equivalence policies in this regard. The commenter suggested that we add language from our training manual to the section on functional equivalence that would direct the consideration of a child's symptoms and the effects of medications and that would indicate that symptoms can be the basis for a finding of reduced functioning and, therefore, of equivalence.

Response: We have not explicitly adopted the comments in these rules; however, they have been obviated by other rules that we have already referenced or discussed above (e.g., §§ 416.929, 416.924c). We have also addressed them in the reorganization and revision of the childhood disability rules in §§ 416.924 through 416.924e.

As a preliminary matter, we direct the attention of the commenter to the third sentence of § 416.926a(a), which provides explicitly that we will consider symptoms in our equivalence determinations. The fourth sentence of the paragraph also states that we will consider "all relevant evidence" in a child's case record. Furthermore, as we have explained elsewhere in this preamble, we intend each rule in these final regulations to be read in the context of all the other rules, including existing regulations that are not part of these final rules. Thus, § 416.926a(b) (1) and (2)—which describes "medical" equivalence—states that we will consider a child's "medical findings" when we decide equivalence. The term "medical findings" is a term of art in our rules, defined in § 416.928 and in the last sentence of § 416.925(c) as meaning "symptoms, signs, and laboratory findings." These are some of the oldest terms in our rules and are well-known to our adjudicators.

The rules on the evaluation of symptoms, including pain, already mentioned above in another response, include sections on the role of symptoms at each step of the sequential evaluation process, and take cognizance of the childhood disability rules, including the rules on functional equivalence. Thus, in § 416.929(d)(3) of the final rules addressing the evaluation of symptoms, headed "Decision whether the Listing of Impairments is equaled," we state: "If you are a child and we cannot find equivalence based on medical evidence only, we will consider pain and other symptoms under § 416.926a(b)(3) in determining whether you have an impairment(s) that results in overall functional limitations that are the same as the disabling functional consequences of a listed impairment" (56 FR at 57946). We believe that this squarely addresses the comment and

that there is no need to repeat the statement in § 416.926a, just as we do not repeat statements about symptoms from § 416.929 in the adult rules on equivalence.

In addition, and as we explained at the beginning of this preamble, we have reorganized the rules in §§ 416.924a through 416.924e of the prior rules, and revised several statements in §§ 416.924c and 416.924d of the prior rules (final §§ 416.924b, 416.924c and 416.924d) to make it clear that the same considerations and kinds of evidence apply to all assessments of functioning, irrespective of the step of the sequence at which we are doing the assessment. We believe that this reorganization will make it clear that the effects of symptoms can so limit a child's functioning that a finding of equivalence may be appropriate. (Ordinarily, this will be a functional equivalence, but there are circumstances, such as in the case of mental impairments, when the functional effects of symptoms can result in a finding of medical equivalence.) We also believe that the reorganization will not only address the comments by underscoring the need to consider a child's symptoms and the effects of medication on functioning when we consider functional equivalence, but that they go further than the commenters' suggestions by reminding our adjudicators to consider all other relevant factors as well. (See, e.g., final § 416.924c.)

Comment: Several commenters suggested that the rules should include language explicitly stating the requirement to evaluate the combined effects of all a child's impairments on overall functioning. They also asked that we state the policy that a child's impairment(s) need not be medically related to a listed impairment in order to use the listing for the purpose of functional equivalence comparisons.

Response: We have adopted the comments. In § 416.926a(b)(3), we have added a new second sentence which states that we will consider the combined effects of all of a child's impairments when we assess overall functioning. We have also added a clause at the end of the original second sentence (now the third sentence in these final rules) which states that the listing we choose for comparison need not be medically related to the child's impairment(s). Neither of these changes is substantive; they merely reflect our actual practice in adjudicating claims under the prior rules.

Comment: Two commenters recommended that we include the general cautionary language from the

preamble to the prior rules (56 FR at 5544): " * * * the primary focus should be on the disabling consequences of an individual's conditions, as long as there is a direct, medically determinable cause for an individual's disability."

Response: We did not adopt the comment because the rules already contain nearly identical language. The last sentence of § 416.926a(b)(3) states: "When we make a determination or decision using this rule, the primary focus will be on the disabling consequences of your impairment(s), as long as there is a direct, medically determinable cause for these consequences."

Comment: One commenter, in an apparent reference to § 416.926a(c), "Responsibility for determining equivalence," stated that it would be inappropriate for a nonphysician, such as a psychologist, to make a decision of functional equivalence using any nonmental listing. The commenter provided as an example somatoform disorders that result in listing-level physical restrictions which are functionally equivalent to a musculoskeletal listing. The commenter suggested that, at a minimum, all claims based on the mental impairment listings that were reviewed by a psychologist and denied should be reviewed by a physician to ensure that functional equivalence had been considered.

Response: It has been our longstanding policy that psychologists in the State agencies are permitted to make determinations based on any mental disorders, including the various kinds of somatoform disorders. This policy also applies to determinations of functional equivalence. If necessary, a psychologist may consult with an appropriate physician specialist to assist in the determination whether a somatic listing is functionally equaled.

Comment: One commenter wanted to know who the "other designee of the Secretary" in § 416.926a(c) might be.

Response: The "other designee" refers to Federal medical and psychological consultants in those situations in which we, rather than a State agency, make the determination. This can happen in a number of circumstances, such as when our Federal Disability Determination Services adjudicates a case, in foreign claims, and in claims involving the Railroad Retirement Board. (See § 416.903, "Who makes disability and blindness determinations.")

Comment: Several commenters were concerned that the examples in § 416.926a(d) would become a kind of "listing," and that the principles of functional equivalence would be applied only in cases which presented

facts that matched the examples. The commenters offered several specific suggestions for revising the text, ranging from additional language to underscore the fact that the examples were not an all-inclusive list to suggestions for adding explanations of the rationales behind the various examples in order to provide more insight into the principles the examples are intended to illustrate. One commenter recommended language we could use to explain several of the examples. Two commenters asked us to cite the listings that are equaled in the examples, stating that this, too, would help provide more insight into the process.

Response: We adopted the comments that asked us to state even more clearly that the examples are not all-inclusive. We revised the last sentence of § 416.926a(d) by dividing it into two sentences and adding language to the second of the newly created sentences. The latter sentence now provides that, "Findings of equivalence based on the disabling functional consequences of a child's impairments should not be limited to the examples below, because these examples do not describe all the possible effects of impairments that might establish equivalence to a listed impairment." We also added a final sentence to this paragraph to state the duration requirement.

We did not adopt the comment suggesting that we add rationales to some or all of the examples in order to provide more insight into their intent. We believe that such expository language is not appropriate in a regulatory context. However, we have used much of the language suggested by one of the commenters in our operating manuals.

We also did not adopt the comment that asked us to state the particular listings that are equaled in the various examples. In some cases, the examples do equate with specific listings. For instance, the second clause of final example 4, ("ambulation possible only with obligatory bilateral upper limb assistance") restates the disabling functional consequences of Listing 101.03B, and final example 5 describes two of the so-called paragraph B criteria of the childhood mental listings. Other examples, for instance, final example 3 ("frequent need for a life-sustaining device"), are not as specifically tied to single listings and could be found equivalent to more than one listing. We, therefore, believe that adding listings references could have the paradoxical effect of narrowing the use of the examples, an outcome this commenter and others cautioned us to avoid in the

comment immediately preceding this one.

Comment: In a related comment, two commenters urged us to add a new example 16 in order to prevent the list of examples from being viewed as all-inclusive. They recommended language for the provision that would remind adjudicators to include "any other impairment or combination of impairments which equivalently limits function at a listing level equivalent of severity."

Response: We did not adopt the comment because such language is already included in the regulations. As the introductory paragraph of § 416.926a(d) explains, the subparagraphs are merely "some examples" of consequences of impairments that we might not have found medically equivalent under the rules we used prior to the decision in *Zebley*, but which are functionally equivalent under these rules. Moreover, in our opinion, the provision proposed by the commenters would not fit logically into the list of examples. The commenters' language is a general statement that in itself is all-inclusive and, therefore, is not an "example." However, as we explained in the previous response, we have revised § 416.926a(d) to state even more strongly that the determination of functional equivalence should not be limited to the examples in the subparagraphs because the examples do not describe all the possible effects of impairments that might establish equivalence under the new rules.

Comment: Several commenters noted that the source of some of the functional equivalence examples was the proposed "screen" which was discussed in the preamble to the prior rules (56 FR at 5536, 5550). The commenters observed that the suggested screen criteria were somewhat analogous to presumptive eligibility criteria, and were sometimes unwittingly stated in terms of severity that exceeded listing-level severity. Thus, these commenters thought that, because we had included these proposed screen criteria, the list of functional equivalence examples could set a "standard" or threshold" for functional equivalence that is higher than it ought to be.

The commenters offered several suggestions. One suggestion was that we include additional examples that were "closer to the threshold of what constitutes functional equivalence." Several commenters asked us to revise the examples that described limitations even greater than listing level so that they were not as severe. Other

comments asked us to delete those examples.

Response: We did not adopt the comment asking us to add more examples. Generally, we try not to use examples in the regulations, although we may make an exception when—as here—there is a policy for which we think a few examples may be helpful during the initial implementation period. Furthermore, we are afraid that, were we to make the list longer, we would increase the risk of the examples being viewed as an all-inclusive "listing."

We adopted several, but not all, of the comments that asked us to delete or revise certain examples. We provide our responses to the specific comments about the examples in the following comments and responses.

Comment: Three commenters asked us to delete the word "daily" before "need for a life-sustaining device" in example 3.

Response: Although we believe that the provision cannot stand without some quantification, we changed the adjective "daily" to "frequent" in response to the comments. We believe that if we had deleted the adjective entirely, the example would have been too imprecise. The example includes "mechanical ventilation" as an indication of the kind of life-sustaining device we intend by this example. If we had deleted the word "daily" without replacement, the example could have been misconstrued to include any child who needed mechanical ventilation, even if only infrequently. An additional advantage to using the word "frequent" is that the example now describes conditions that may be episodic; i.e., subject to frequent exacerbations and remissions.

As we explained in the "Explanation of Final Rules" section of this preamble, we also deleted the statement, "lasting or expected to last," from this example. This is because the statement is a statutory requirement that applies to all of the examples and we did not want to give the impression that it only applied to those examples that mentioned it. We have moved the statement to the opening text of § 416.926a(d), before the beginning of the list of examples.

Comment: Other comments asked us to delete example 4 in the prior rules, because "complete inability to stand and walk" is more severe than example 5 in the prior rules, "marked inability to stand and walk," and, thus, is superfluous. One commenter suggested that we combine former examples 4 and 5 to read "inability to stand and walk." One commenter asked us to delete, "e.g., ambulation possible only with

obligatory upper limb assistance," from former example 5 because the commenter thought that an example within an example would lead to less flexible interpretation and application of the example.

Response: We have deleted example 4 of the prior rules because we agree with the commenters that it merely describes the most severe limitation on the ability to stand and walk and is, therefore, subsumed under former example 5. Moreover, a child who is unable to stand and walk would be found to have an impairment that meets or medically equals one of our listings. For the same reasons, we did not adopt the comment that asked us to combine former examples 4 and 5 to state, "inability to stand and walk," which is only a less-redundant way of saying "complete inability." We did not adopt the comment that suggested we delete the example within former example 5 (now example 4 in these final rules). The example-within-the-example is adopted from Listing 101.03B and provides a more precise description of listing-level severity.

Comment: Other comments asked us to delete the word "complete" before "inability to perform self-care skills" in former example 6 and in former example 8 before "inability to function independently outside the area of one's home * * *"; the second comment suggested that as an alternative we replace "complete" with "marked" in example 8.

Response: Instead of deleting the word "complete" from former example 6, we have deleted the example entirely. As in the preceding comment and response, we agree with the commenters who pointed out that complete inability to perform self-care skills would not be useful as an example of functional equivalence. In addition, based on the general comments that asked us to delete language from the examples illustrating impairment severity that exceeded the severity of the medical listings, we have deleted former example 15, "gross microcephaly of greater than 3 standard deviations," which is generally associated with significant mental retardation. Most, if not all, children with such limitations would have impairments that are likely to meet or medically equal one of our listings.

We did not adopt the comment asking us to revise former example 8 (now example 6 in the final rules, "Any physical impairment(s) or combination of physical and mental impairments causing complete inability to function independently outside the area of one's home within age-appropriate norms")

because its language is adopted from adult Listing 12.06C, except for the final phrase, "within age-appropriate norms." Our intent with this example was to show how a physical impairment(s), or a combination of physical or mental impairments, in a child could be found equivalent to the listings by reference to an adult listing. We believe that altering the language could obscure this point. In any case, for the sake of consistency and clarity, we would prefer not to introduce a separate rule that uses slightly different language than an existing, but obviously similar rule.

Comment: One commenter suggested that we delete the criterion for "prematurity" from former example 10 (now example 8), because a weight of less than 1200 grams at birth in a full-term infant has implications for the infant's growth and development that are at least as serious as those for premature infants. The commenter also pointed out that there was an inconsistency in our rules defining prematurity: Example 10 defined prematurity as "37 weeks or less," while § 416.924b(c) of the prior rules (final § 416.924a(c)) defined prematurity as "less than 37 weeks." By deleting the references to prematurity from the example, we could eliminate the inconsistency.

Response: We adopted the comment by deleting the word "premature" and the parenthetical statement, "i.e., 37 weeks or less," from final example 8. For the same reason, we deleted the word "premature" from final example 9 (former example 11), "Infants weighing at least 1200 but less than 2000 grams at birth and who are small for gestational age, until attainment of at least 1 year of age."

Comment: One commenter asked us to define "small for gestational age" in final example 9 (former example 11).

Response: We adopted the comment. We deleted the phrase, "at least 4 weeks," from the phrase "at least 4 weeks small for gestational age," in final example 9 and added the more precise statement that "small for gestational age" means a birth weight that is at or more than two standard deviations below the mean or below the third growth percentile.

Comment: Two commenters also suggested that the provision of example 14 of the prior rules (example 12 in the final rules) which "qualifies" children up to the age of 3 should be extended to former examples 10, 11, 12, and 13 (final examples 8, 9, 10, and 11). They said that many of the extremely serious conditions in the list of examples will require extensive medical intervention well beyond the first year of the child's

life, and that SSA should therefore assure families that financial assistance and access to Medicaid would be available for at least 3 years. This extension of time would eliminate the inefficient and needless cost to SSA of evaluating these children at 1 year of age, only to find that they continue to be disabled.

Response: We did not adopt the comment. The various examples cited by the commenters have different purposes. Final examples 8, 9, and 10 (the two low birth weight examples and the example of physical impairment(s) that satisfy the requirements of Listing 112.12) are essentially examples for infants whose impairments cannot be precisely diagnosed.

Final example 11, for children who have major congenital organ dysfunction which could be expected to result in death in the first year of life without surgical correction, is more medical in its approach. It describes children with physical impairments who may eventually improve so that they are no longer disabled but who we can reasonably expect will be disabled until at least age 1 based on the nature of the impairment, the child's current functional status, the extent of the treatment and recovery required, and clinical judgment about the outcome of the treatment. However, the principles in the example could certainly apply to older children if the facts warranted.

Final example 12, "Tracheostomy or gastrostomy in a child who has not attained age 3," is more akin to final example 11 than to the other three examples. It is not an example that necessarily means a child will be found disabled until age 3. It merely says that, in such a small child, this kind of treatment, if it has lasted or is expected to last for 12 months, will have a serious enough impact on daily functioning and age-appropriate behavior as to constitute a disability.

Nonetheless, our use of age 1 in the other examples is not an automatic cutoff date at which we assume children are no longer disabled or at which we necessarily require a continuing disability review. Our intent from the outset was to employ sound, basic adjudicatory principles, which dictate that some judgment be made as to when to reexamine each individual child based on the facts presented. This is, in fact, the guidance we have given our adjudicators and the way we have actually implemented these rules. Our goal has only been to provide examples, not all-inclusive listings: If we were to change the age reference to 3 years, we could still be subject to the same criticism from those who pointed out

that some children are difficult to test at ages 4 or 5.

Finally, we want to state clearly that, by statute and regulation, we do not automatically terminate the benefits of any disabled person, adult or child, at a given time. Once we have found a child disabled, we may only find the child no longer disabled if the standards for terminating an individual's benefits as set forth in the statute and regulations are met.

Comment: One commenter recommended that we add the language, "Dependence on life-sustaining medical equipment or intervention such as tracheostomy and gastrostomy," to former example 14 ("Tracheostomy in a child who has not attained age 3") in order to make it clear that there are other kinds of major medical intervention or support that are similarly intrusive and impairing.

Response: We partially adopted the comment. We added "gastrostomy" as another example of functional equivalence in children who have not attained age 3 in final example 12.

Comment: One commenter stated that "many of the remaining functional equivalence examples are taken directly from the 'B' criteria of the childhood mental disorder listings." The commenter felt that, although the examples were correct, "those listings already allow such determinations." The commenter said that it would be better if we were to include examples involving physical impairments "and other 'harder' examples," targeted more toward physical impairments. Another commenter thought that none of the examples captured the situation of children with arthritis who may not have complete or even marked inability to stand or walk, but may be able to walk only short distances and stand for only short periods. This commenter also wondered why there were no examples of diseases with periods of remission.

Response: We have clarified the examples in response to the comments. We believe that the commenters misunderstood the purpose of the examples, which are almost exclusively for use in evaluating physical impairments or combinations of physical and mental impairments.

Only three of the functional equivalence examples were taken from the mental listings: Final example 5, which illustrates the use of the paragraph "B" criteria for physical, or combined physical and mental impairments; final example 6, which illustrates the use of an adult paragraph "C" criterion for physical, or combined physical and mental impairments; and final example 10, which illustrates the

use of the mental listing for infants to evaluate infants with physical, or combined physical and mental impairments. By suggesting that "those listings already allow such determinations," the first commenter apparently misunderstood that these few examples refer to the use of mental criteria to evaluate physical impairments, or combinations of physical and mental impairments. We did not intend them to refer to mental disorders because mental disorders that satisfy the criteria of the mental listings already meet or medically equal the mental listings. The point of the examples was to illustrate how a physical impairment(s) could be found equivalent by reference to the broad functional criteria in the mental listings, in our view a concept that is especially useful for evaluating the effects of multiple impairments, chronic episodic impairments, and impairments involving diminished functioning because of symptoms.

However, since the commenter misunderstood the purpose of these examples, we believe that it would be helpful to clarify the purpose of the examples. Therefore, we have added the clause, "Any physical impairment(s) or combination of physical and mental impairments causing * * *," to the beginnings of final examples 5 and 6. In final example 10, we also added the phrase, "or combination of physical and mental impairments," for consistency with the other examples. For the same reason, we replaced the word "disorder" with the more precise "impairment(s)." We believe that with these clarifications it should be clear that these examples are targeted almost exclusively at physical impairments.

With regard to the second commenter's concerns, we want to assure the commenter that the examples do cover the situations described. There is no requirement that marked inability to stand and walk be the result of a continuous, mechanical musculoskeletal defect, since that would, in effect, describe medical equivalence and defeat the purpose of the functional equivalence policy. Children with rheumatoid arthritis who are able to walk only short distances and stand for only short periods because of pain, fatigue, or weakness do have marked inability to stand and walk. Indeed, one of the exercises we use in our training describes a child with a respiratory impairment that results in marked inability to stand and walk because of shortness of breath and fatigue; the impairment need not be one that has articular or other musculoskeletal manifestations, as long

as the disabling functional outcome is the same. As to the concern about impairments (such as rheumatoid arthritis) that are subject to periods of remission and exacerbation, we believe that our reorganization of the rules makes clear that the "other factors" in final § 416.924c apply at every step of the sequence. This means that chronic, episodic impairments or impairments that require adaptations or structured settings must be considered in the same way at the listings step as at the other steps of the sequential evaluation process. As we have already stated, the revision to final example 3 and the examples of the functional criteria from the mental listings also include such impairments.

Comment: One commenter was concerned that children who are impaired to a lesser degree than complete dysfunction or who require something less than 24-hour monitoring "will be denied eligibility on equivalence grounds." The commenter said that many children with spina bifida occulta, for example, must contend with severe restrictions on their behavior, education, and development and yet often do not suffer impairments of the degree indicated by § 416.926a(d).

Response: We believe that we have made clear in the foregoing responses and revisions that children do not have to be completely dysfunctional or require 24-hour monitoring to have impairments that are functionally equivalent to the listings. We also believe that we have made clear in the response immediately preceding this one that children with sufficiently severe limitations in their ability to function—which could be in terms of behavior, development, and ability to learn or go to school—could be found to have impairments that are functionally equivalent to the listings, especially through the use of final example 5. Those whose functional limitations are less severe will not be "denied eligibility on equivalence grounds"; rather, their disability decisions will be based on an individualized functional assessment at the last step of the sequence.

Comment: Several commenters submitted identical language revisions that would provide for the "affirmative solicitation of medical evidence, including medical opinion, preferably from a treating source." Some commenters explained that they were submitting this language because they thought we did not provide for the solicitation of treating source evidence at all, or for solicitation of the kind of evidence regarding functioning that we would need to make a determination of

functional equivalence. For instance, one commenter suggested that we add a provision "inviting applicants to submit evidence from doctors, occupational and physical therapists, and other health professionals to support their application." (Emphasis in original.) Another comment, which we received from two commenters, also said: "Unless SSA's own consultative examiners are asked about equivalence, and the specific factors that will go into such a decision, their reports will not be complete enough for adjudicators to make reasonable decisions. One must ask the right question to get the answer." Others saw the language they submitted to mean what the original drafters of the comment undoubtedly intended: that we should solicit opinions about functional equivalence from both treating sources and consultative examiners. Most of the commenters acknowledged that outside opinions about functional equivalence of an impairment should not be binding on us. However, they urged that we actively solicit these opinions as expert testimony from the people who were likely to know the child the best. One commenter cited a 1981 case from the 5th Circuit (*Smith v. Schweiker*, 646 F.2d 1075) and a 1985 case from the 11th Circuit (*Broughton v. Heckler*, 776 F.2d 960) as support for the notion that we should give "substantial" or "considerable" weight to the opinions of treating sources unless good cause exists to the contrary. Several commenters stated that SSA "in all other areas of assessment emphasizes the importance of soliciting evidence and views of treating professionals." (Emphasis in original.)

Response: We did not adopt the comments, which were beyond the scope of these rules. The comments address an issue related to our policies on medical source opinions in § 416.927, which we addressed subsequently in the "Standards for Consultative Examinations and Existing Medical Evidence" (56 FR 36932, August 1, 1991). In the preamble to those rules, we provided lengthy discussions and responses to comments about the role of medical source opinions regarding equivalence, residual functional capacity, and other issues that are reserved to the Secretary because they are dispositive of the ultimate determination of disability. We refer interested readers to those discussions at 56 FR at 36934 and 36950, and the regulation section at 56 FR at 36968. In the preamble, we also explained that we were guided in the development of the rules by the general

principles articulated by the various courts of appeals. (See 56 FR at 36934 and 36950.)

In brief, we do not solicit opinions on issues such as whether an impairment(s) is equivalent to a listing because we do not consider treating sources or consultative examiners to be experts in these matters. However, we do solicit opinions about the "specific factors that will go into such a decision" (as two of the commenters said); i.e., the nature and severity of the claimant's impairments. The fact that we do not solicit opinions about equivalence, disability, and other dispositive issues, does not mean that we will disregard any opinions that treating sources submit to us. It is not true, as several commenters believed, that we "deprive the treating pediatrician of the opportunity to submit such evidence." The rules in § 416.927 provide that we must consider such opinions as part of the evidence.

Finally, we actively and routinely solicit medical evidence from treating and examining sources, including opinions about the nature and severity of the impairments. In fact, we ordinarily request the evidence for the claimant; the claimant need only give us permission to do so.

Section 416.994a—How We Will Decide Whether Your Disability Continues or Ends, Disabled Children

Comment: One commenter asked whether the reference to equivalence to the listings in § 416.994a(b)(1) included functional equivalence.

Response: Yes. The reference in the paragraph to § 416.926, the rules on equivalence for adults, was a typographical error which we corrected in an error notice on April 1, 1991 (56 FR 13266). The reference should have been to the childhood rule, § 416.926a, which includes the policy of functional equivalence.

Comment: One commenter referred to the rule in § 416.994a(d)(1)(i). This section provides that we will find medical improvement related to the ability to work when the most recent favorable decision was based on a finding that the child had an impairment that met or equaled a current listing and the child no longer meets or equals that listing. The commenter said that in the past we had modified a similar rule for adults to permit adults to show that they could meet the revised adult mental listings published in 1985. The commenter recommended that there should be a similar modification of the language for children with regard to the new childhood mental disorder listings. The

commenter also stated that the "patent absurdity" of our rules was demonstrated by the fact that some children who have medically improved, so that their impairments no longer meet the prior listings, will still be found disabled on the basis of the individualized functional assessment rules.

Response: We did not adopt the comment, because these rules already protect children in the manner suggested. First, the commenter was not correct about our modification of the adult rules. Except for the minor editorial revisions we made in connection with the prior publication of the childhood rules on February 11, 1991, we have not substantively modified the adult rules on continuing disability since their initial publication on December 6, 1985 (50 FR 50118). Second, we believe that the commenter misunderstood these rules. The first step in the medical improvement sequential evaluation process asks whether the child has an impairment that meets a current listing, or an impairment(s) that equals a current listing (§ 416.994a(b)(1)). Therefore, we make this determination before we consider whether there was medical improvement (§ 416.994a(b)(2)), and before we consider whether the impairment meets a prior listing, when we are considering whether there is medical improvement related to the ability to work (§ 416.994a(d)(1)). This policy is identical to the process in the adult rules in § 416.994.

We also disagree with the last comment. We believe that the fact that children will have an opportunity to show that they are still disabled, even though their impairments have improved so that they no longer meet or equal current or former listings, demonstrates the inherent fairness of these rules and our compliance with the *Zebley* decision and congressional intent.

Comment: The same commenter objected to the provision in § 416.994a(d)(2). This section addresses the situation in which we must decide whether there has been medical improvement "related to the ability to work" when the most recent favorable decision was based on an individualized functional assessment. The section provides that we will do a new individualized functional assessment based on the impairments that were present at the time of the most recent favorable decision, although we will consider functions appropriate to the child's current age. The commenter, who acknowledged that the rules for children were the same as the rules for

adults, objected that there is no discussion in this section about looking at the whole child or considering impairments that have arisen since the last favorable decision and that are related to the old impairments.

Response: As the commenter noted, the rules in § 416.994a(d)(2) mirror the rules for adults in § 416.994(b)(2)(ii), as well as the rules for disabled beneficiaries under title II in § 404.1594(c)(2). The only difference in the rules for children is that they refer to an "individualized functional assessment" instead of a "residual functional capacity assessment," which only applies to adults.

The commenter's concerns are the same as those in comments we received when we first published the medical improvement regulations. In the preamble to those rules, we explained that the decision whether medical improvement is related to the person's ability to work is required by the statute but that it is not a decision that the person's disability has ended, only a decision about whether we have to go on and decide if the person is still disabled based on all of his or her current impairments (50 FR at 50122). At the time we responded to the comments, we believed the concerns were unfounded, and approximately 7 years of continuing disability reviews for adults under titles II and XVI have substantiated that belief.

A finding that any medical improvement is related to the ability to work is not a finding that the child's disability has ended. We state this unequivocally in § 416.994a(d): "A determination that there has been medical improvement related to your ability to work does not necessarily mean that we will find that your disability has ended. We must also show that you are not currently disabled using rules governing severity and the last step of the childhood sequential evaluation process for initial claims in §§ 416.924 through 416.924e." It is at this "currently disabled" step that we consider what the commenter referred to as the "whole child" by considering all the child's current impairments. Nevertheless, in response to the comment, we have reinforced this statement in final § 416.994a(d)(2) by revising the second sentence as follows: "However, the new individualized functional assessment will take into consideration any current medical findings or functional limitations related to the previously existing impairments, and will be based on those functions that are appropriate to your current age."

Comment: The same commenter stated that it is likely there will be some cases of children having both mental and physical impairments in which we did not document the mental impairment because an allowance could be determined based on the physical impairment alone. The commenter advised us to take careful note of this situation when it occurs and to instruct adjudicators to carefully scrutinize these children's files for the existence of a mental impairment at the time of the last favorable decision when we determine whether any medical improvement is related to the ability to work.

Response: As the commenter is apparently aware, we instruct our adjudicators to consider all impairments that were present at the time of the most recent favorable decision, not only those that went into the favorable determination, when we determine whether any medical improvement is related to the ability to work. We will continue to be very careful in this regard.

Comment: The same commenter said that the child's continuing disability review process is complicated by the role that age will play. The commenter asked how an adjudicator will factor in age-appropriate functions on top of a "fictitious" individualized functional assessment that does not take into account new impairments that did not exist at the time of the most recent favorable decision.

Response: For reasons already discussed, we do not agree with the characterization of the process for determining whether any medical improvement is related to the ability to work as "fictitious." We have been employing this process in adult continuing disability reviews for approximately 7 years; our experience in adult cases is a valid basis for our conclusion that the process will work for children.

The remainder of the comment was not clear, but we assume that the commenter was referring to the situation in which the child is in a later age category at the time of the continuing disability review. The commenter seems to have thought that there would be a problem evaluating a child's age-appropriate functioning with reference only to the impairments that existed at the time of the most recent favorable decision. We disagree. We believe that the process of doing a current individualized functional assessment based on the current status of those impairments that were present at the time of the most recent favorable determination will be no more difficult

than the corresponding process in adult claims; indeed, we think that the process will be the same.

Comment: The same commenter asked what "eligible to receive special Supplemental Security Income cash benefits" means in the fourth sentence of § 416.994a(f)(1). The commenter wondered if it was a reference to the special provisions, in section 1619 of the Act which permit a person who continues to have a "disabling impairment" to work at the substantial gainful activity level and be eligible for special SSI cash benefits. The commenter also asked whether the phrase in the same sentence, "eligible to receive," meant something different from "receiving." The commenter then said that there was a "key problem" with the provision in that section 1619 of the Act is a protection for people who continue to have disabling impairments and who work at the substantial gainful activity level, but most children will not have earnings at that level. The commenter wondered whether children would, therefore, be somehow less protected for work incentives than those over age 18 and whether we would consider earnings which are below the substantial gainful activity level as evidence of ability to work.

Response: The phrase "eligible to receive special Supplemental Security Income cash benefits" does refer to the special provisions in section 1619(a) of the Act. This language does not mean something different than "receiving." The language and the limited exception it explains have not been changed by § 416.994a. Finally, we do not believe that children are less protected for work incentives than are individuals over age 18. We do not consider earnings below the substantial gainful activity level as evidence of ability to work and, thus, children, who generally earn less than the substantial gainful activity level, do not need the work incentives of section 1619 to protect their eligibility.

Comment: The same commenter was concerned about the vocational therapy exception in § 416.994a(f)(2). The commenter thought it "probable" that the majority of children will be receiving some vocational therapy. As a result of the aging process in children, the commenter thought it was not fair to apply this standard, because unlike the situation for adults, the nature of the services available to children in the school setting could result in many not benefiting from the medical improvement review standard.

Response: The vocational therapy exception is a statutory requirement in section 1614(a)(4)(B)(i)(I) of the Act (42 U.S.C. 1382c(a)(4)(B)(i)(I)) which

applies both to adults and children. For that reason, we must include the provision in our regulations. In those childhood cases where the exception is found to apply, the rules in § 416.994a(f) state that we must still also show that the child's impairment(s) is now no longer of comparable severity to any impairment(s) that would disable an adult, taking all of the child's current impairments into account. Therefore, we believe that when the vocational therapy exception does apply, it will be a valid finding and not unfair.

Comment: Two commenters referred to the statutorily mandated exception to medical improvement for failure to follow prescribed treatment in § 416.994a(g)(4). Both commenters thought that it was unreasonable to hold children to the adult standard and to penalize them for failure to follow prescribed treatment. One commenter said that we should delete the paragraph; alternatively, we should add language to it from two cases that were decided by the Court of Appeals for the Eighth Circuit. The other commenter said that we should modify the section to provide standards for children.

Response: We did not adopt the comments. We could not delete the paragraph because it reflects a statutory requirement in section 1614(a)(4) of the Act (42 U.S.C. 1382c(a)(4)). We also believe that the changes suggested by the commenters involve issues that are beyond the scope of these rules. The changes would also require changes to other regulations addressing the failure to cooperate. We are considering issuance of an NPRM that will address the broader issues. As we draft the NPRM, we will consider including the language suggested by the first commenter as well as all of the other suggestions we received.

Comment: Two commenters said that the rules did not say what we do in the continuing disability review process when a child who is receiving SSI payments based on disability turns age 18; i.e., how we make the transition from child to adult in continuing disability reviews.

Response: There is no separate section in the rules to address this issue because the policy is inherent in the existing rules; it stems from the statutory requirement that we generally may not find that disability has ended unless there has been medical improvement related to the ability to work. Therefore, if the most recent favorable decision was based on a childhood listing, we use the childhood listing for comparison, even though the person is now an adult. If the most recent favorable decision was based on an

individualized functional assessment which considered the domains of development and functioning, we prepare a current individualized functional assessment as though the person were just under age 18. This assessment is then compared with the prior assessment. If the basis for the prior allowance was an individualized functional assessment that considered work-related activities, we prepare a residual functional capacity assessment for the comparison.

Comment: A commenter asked whether we plan to do special screenings of childhood cases where the exceptions are applied, as we did for adults when we first implemented the medical improvement rules in 1985.

Response: We do not have any plans to do this. We instituted the "special screenings" when we first promulgated the rules in 1985 because they contained many new concepts, including the exceptions, and we wanted to be sure that the new, complex rules were correctly understood. The special screenings were not confined to adult cases, but included title XVI childhood disability cases. As adjudicators became familiar with the medical improvement concepts, we gradually eliminated categories of cases subject to review until we stopped the review entirely; we have not reviewed any cases under this special screening for several years. Since the purpose of the review was to gauge adjudicator understanding of then-new medical improvement concepts and the concepts are now well understood, we do not believe we need a new special screening of childhood disability reviews which utilize essentially the same principles we use under the adult rules.

Additional Comments

Request for Additional Public Comment Time

Comment: Several commenters urged us to extend the comment period to more than 60 days. The commenters said that a longer comment period would give us, as well as advocates and the families of disabled children, more time to gain a clear understanding of how the new regulations would work and any problems associated with their application and implementation. One of the commenters also urged us to keep an open mind on the new rules as adjudicative experience is generated during the first two years of their implementation, and to be willing to make needed changes in the rules in response to public feedback.

Response: We adopted the comments, although not to the extent that some

commenters had asked. A 60-day comment period is our standard period of time for allowing comments on administrative rules, even when they are proposed rules that have never been tried before and will not be used until after the public has had an opportunity to comment. However, because of the number of requests we received, and because we agreed with the commenters about the unusual significance of these rules, we extended the closing date from April 12, 1991, the date we originally announced in the *Federal Register* (56 FR 5534), to July 8, 1991 (56 FR 21075, May 7, 1991). Although some commenters recommended longer extensions—some, up to one year—we believe that 147 days, or nearly 5 months, was sufficient; with the extension, the length of the comment period was also consistent with a recommendation we received from the late Senator John Heinz of the Senate Special Committee on Aging, who recommended a 150-day comment period.

With regard to the second comment, we have been carefully monitoring these rules during the more than one- and-one-half years since their implementation. We believe that the reorganization and revisions in these final rules demonstrate that we have kept an open mind about any changes that we deem necessary based on our own experience and public feedback. We will also continue to keep an open mind in the future, as we always do.

Comment: One commenter suggested that we consider reconvening the individual childhood disability experts who helped us in the early stages of the regulation process before finalizing these rules.

Response: We do not believe that it is necessary to consult with the experts again. We do not believe there are any issues in these rules or in the comments that would be the proper focus of the experts. Moreover, shortly after publication of the prior rules on February 11, 1991, we sent copies of the rules published in the *Federal Register* to each of the experts, providing them an opportunity to submit comments. We received comments from one of the experts, which we have incorporated into these final rules.

Commitment To Update Regulations in Future

Comment: One commenter observed that, given the dynamic nature of medicine, with rapidly expanding technology, it is reasonable to anticipate advances in the screening and diagnosis of, and early intervention for, children with impairments. For this reason, the

commenter recommended that we provide a sunset date of 3 years for the new rules.

Response: We do not believe that it is necessary to provide a sunset date, as we do for our medical listings. The medical listings in the Listing of Impairments contain specific medical criteria; as such, they do require updating from time to time.

These childhood rules are not analogous to the Listing of Impairments. They are grounded on a requirement for an individualized assessment of each child's ability to function, an assessment that we believe will always be relevant regardless of any future advances in screening, diagnosis, and early intervention. Thus, the fact that there may be such changes should have little or no impact on these rules because our ultimate concern will still be to determine how a given child is able to function and how that ability comports with our definition of disability. The kinds of advances described by the commenter will surely assist us in making this determination (in an evidentiary way and perhaps by providing greater insight into the effects of children's impairments), but we do not think that they will affect the rules themselves. As with all other regulations, we will make changes to the rules in the future should such changes become necessary.

Presumption Of Disability

Comment: We received two comments recommending that we include a separate provision in these rules providing a "presumption" of eligibility for SSI payments for some young children with genetic, congenital, or acquired impairments. (Despite the use of the word "presumption," it was apparent that neither comment was about the special temporary SSI benefit we may pay for a period up to 6 months while we are adjudicating a claim, called "presumptive disability payments.")

One commenter, who may have thought that the rules we published on February 11, 1991, were an NPRM, and who may have been unaware of the interim standard we had been following since the *Zebley* decision, stated that the current rules required children to have impairments that met or equaled the listings. Because of this, and because very young children are difficult to test, the commenter suggested that we provide a separate rule allowing a rebuttable presumption of disability for children under 2 years of age who are born with impairments such as infant drug dependency, AIDS, Infantile Pseudoleukemia, and Tay-Sachs

disease; and to children from 2 to 6 years of age with cerebral palsy, severe orthopedic impairments that affect gait, deafness or blindness, Hodgkin's disease, Tourette syndrome, or multiple sclerosis. The other comment suggested a provision for presuming disability in children under age 4 with certain genetic or congenital impairments that would unquestionably result in eligibility when the children are old enough to be properly tested.

Response: We did not adopt the comments. Notwithstanding the functional equivalence examples in § 416.926a(d), the primary focus of these rules is not on specific impairments that may be disabling, but on establishing general rules for determining disability regardless of the impairment or combination of impairments. Thus, the comments address a subject that is beyond the scope of this particular set of rules.

However, we recognize the commenters' recommendations as being adopted from several pieces of legislation that were proposed in the Senate and House of Representatives during approximately the 3 years preceding the publication of these rules. (For example, see H.R. 868, "SSI Disabled and Blind Children Act of 1989," February 6, 1989; S. 1718, "SSI Disabled Children's Eligibility Act of 1989," October 3, 1989; and S. 2290, "Disabled Children's and Widow's Eligibility Reform Act of 1990," March 3, 1990.) Even though the proposed bills were not enacted into law, we have been addressing in our regulations the underlying concerns of these comments. For instance, on December 12, 1990, we published a new Listing 110.06 in the *Federal Register* (55 FR 51204) which provides that all children with non-mosaic Down syndrome established by clinical and laboratory findings meet the requirements of the Listing of Impairments. We also published separate Listing 110.07 for evaluating FAS and other infant drug dependencies, severe chronic neonatal infections, and other serious hereditary, congenital, or acquired disorders that usually affect multiple body systems. On the same date, we also published Listing 112.07, which includes Tourette syndrome. (See 55 FR at 51225 and 51234.) Some of the impairments named by the first commenter, such as Tay-Sachs disease (Listing 110.08B), have been in our listings for many years. Moreover, the various provisions of these rules that are aimed at the evaluation of infants and young children are also intended to address, in a more sweeping and inclusive way than any finite list of impairments ever

could, Congressional concerns about the difficulty of determining disability in small children. We do not believe that we could have gone any further in these rules without a legislative change.

Finally, we want to make absolutely clear that we have not employed a listings-only test for evaluating childhood disability since the Supreme Court's decision on February 20, 1990, nearly a year before we published the prior version of these final rules on February 11, 1991. The "current" rules at the time of the comment were in fact the prior version of these rules and, of course, went far beyond a listings-only test.

Disability Determinations by Other Agencies

Comment: Two commenters recommended that we make more use of the disability determinations made by other agencies than is indicated in the current rules. One commenter understood the preamble to say that we had "dismissed" the Developmental Disabilities Act (DDA) definition because it was less broad and less liberal than the Social Security criteria. If this is accurate, the commenter maintained, then a child determined to be disabled under the DDA should be eligible for SSI (assuming that the income and resources requirements are met). Similarly, the commenter thought that we "dismiss" the use of determinations made under Part B of the Education of All Handicapped Children Act (now the IDEA) because that part is an entitlement provision without a means test. Another commenter said that the preamble language "cavalierly dismissing the professional evaluations of the Developmental Disabilities Act and the Education of the Handicapped Act are (sic) singularly unpersuasive."

Both commenters pointed out that the information gathered in connection with determinations under these other laws would have relevance to our determinations; one commenter suggested that we could markedly decrease our administrative costs if we were to use this evidence, and encouraged us to actively collaborate with other programs. One of the commenters said that, although we should not be bound by the determinations of other agencies, we should afford considerable weight to their determinations.

Response: Although we agree with the comment about the desirability of obtaining and considering evidence from other agencies, we do not agree that any changes are necessary in these rules. The comment about whether we should consider decisions of other

agencies and the weight we should give such decisions has been obviated by other rules we published subsequent to the close of the comment period for these rules.

The comments addressed a rather lengthy discussion in the preamble to the prior regulations (56 FR at 5539), which we had provided only for informational purposes. The purpose of the discussion was to alert the public to the fact that we were aware of other Federal childhood disability laws (specifically, the DDA and parts B and H of the IDEA), and to explain: (1) That under our regulations we are not bound by disability decisions made under those laws, and (2) why we were unable to adopt their definitions as our standard of childhood disability. We did not intend to give the impression that we would "dismiss" such determinations; as we have stated repeatedly throughout these rules and others we have published during the past several years, we do not "dismiss" or ignore any evidence that is relevant to our determination, including disability determinations made by other agencies.

The point is now moot because we have codified our policy in final rules published on August 1, 1991 (56 FR 36932, "Standards for Consultative Examinations and Existing Medical Evidence"). We now include in § 416.912(b)(5) of this part (as well as § 404.1512(b)(5) of part 404) a rule which states that for our purposes "evidence" includes "decisions by any governmental or nongovernmental agency about whether you are disabled or blind." (See 56 FR at 36955 and 36963.) We believe that this addition to the rules responds to the commenter who thought we would not consider such determinations. As in any situation in which we are required to "weigh" evidence, the weight to which such determinations will be entitled will necessarily depend on the individual facts of each case. However, we must reiterate that we have retained our longstanding rule in § 416.904 (and § 404.1504) that decisions made by other agencies are not binding on us.

In the preamble to the prior childhood disability rules, we also stated that we recognized that the kind of descriptive information obtained in connection with disability evaluations under the other laws was "vital to making decisions about the presence or absence of disability according to SSA's definition of disability." (56 FR at 5539.) Our intent in this passage was to provide reassurance that we would use evidence gathered in connection with other disability determinations. We

made this statement because we held the same position as the commenters, that much of the evidence gathered by other agencies for their determinations would be relevant to our determinations and that it was administratively expedient to try to obtain evidence from these sources. We believe, however, that the recent revisions to § 416.912 mentioned above adequately capture the various kinds of evidence that could be present in another agency's records (including the agency's own decision), and that further revision to our rules is unnecessary at this time.

Impact of the Childhood Regulations on School Systems

Comment: Two commenters, who identified themselves as a school psychologist and a teacher of learning disabled children, expressed the belief that some parents have begun to want the schools to label their children "handicapped" so that they can receive SSI benefits. They reported that they had already been involved in two such cases in which the parents were upset when the commenters refused to provide labels of "learning disabled" to their children, resulting in a poor relationship between the school and the home. In addition, the commenters were concerned about the expense to their school that the number of requests for evidence would cause.

Response: As we have already stated in this preamble, we are required to follow the statute and our regulations. Because school evidence is one important source of information about children's functioning, we will continue to seek such evidence when it is relevant to our determinations.

We also state clearly in our rules that, even though we will consider determinations by other governmental or nongovernmental agencies, such determinations (such as that a child is "handicapped") are not binding on us. We nevertheless understand the commenters' concern: This is why our notices clearly state that the determination was made by an agency of the State and was not made by the claimant's doctor or by other people or agencies who gave us evidence. We also share the commenters' concern about the impact our requests for school evidence may have on the school systems. For this reason, we have been working at both the local and national levels to clarify the types of information we will need. In response to the comment (and one other, already described in an earlier comment and response), we have also clarified the rules in § 416.924c(g)(1) to state that we

will consider school evidence only when it is relevant and available to us.

Comment: One commenter, who identified himself as a superintendent of schools, was concerned that the Federal government, in reaching beyond the Federal children's program criteria to identify students who might qualify for benefits, may be creating a barrier to the educational process that has traditionally taken place in the schools. The commenter stated that a "student's perception of himself and his ability to learn is called into question when he is labelled as handicapped." The commenter thought that the student's "incentive to achieve is weakened by the knowledge that a monthly check is based on the failure to achieve." In addition, the commenter was concerned that if we provide assistance to students who exhibit violent and disruptive behavior, the perception will exist (for students and faculty alike) that financial gain is the reward for non-conformance.

Response: These rules implement the law and are consistent with the Supreme Court's decision in *Zebley*. In any event, we do not agree with the commenter that they present a barrier to the educational process. First, in many cases a parent or other caregiver files the claim and the child may not be aware that a claim has been filed or that monthly benefits are being paid. Second, children who have impairments that limit their ability to function in an age-appropriate manner to the extent required by these regulations may already know they are different from other children. Third, many of the school-age children for whom claims are filed have already been labelled as handicapped by the school system. Fourth, we have a more sanguine view of the motivation of students with impairments, and believe that these benefits will not be an incentive to underachieve but rather function as support toward becoming a productive member of society. Last, these rules allow payment of benefits to children who exhibit violent and disruptive behavior only as the result of medically determinable impairments which cause them to behave that way, not as a reward for nonconformity.

Comment: The first two commenters expressed concern that we recognize "learning disabilities" as medically determinable impairments that could result in, or contribute to, a finding of disability. According to the commenters' interpretation of the definition of learning disabilities in the IDEA, children with learning disabilities should have been excluded from the proposed SSI childhood regulations. The commenters noted that the

definition of learning disabilities in the IDEA excludes from the term "learning disability" any learning impairment that is attributable to environmental, cultural, or economic disadvantage. The commenters seemed to reason, therefore, that a poor child with a learning problem could not also be labelled "learning disabled" under the definition in the IDEA.

Response: We disagree. It is well understood that learning disabilities can, and do, coexist with other medical conditions and in different environments. We have reviewed many claims in which both we and the child's school system determined the child's learning problems could not be attributed to the fact that the child was poor or had one of the impairments named in the IDEA, and that the child did have a "specific learning disability." Moreover, a learning disability can be a "medically determinable impairment," and we have no authority to exclude it from our consideration of children's claims.

Comment: The same two commenters thought that the rules required a child to be unable to perform the normal activities of childhood—such as dressing and feeding oneself, playing, and going to school. This would mean, according to the commenters, that only children who were not in school would qualify for benefits. The only exception would be children with severe (profound) mental retardation; they attend school but are unable to do the other normal childhood activities. The commenters said that SSI payments should be made available only to children who have multiple handicaps, i.e., those with profound mental retardation and physical handicaps; an exception would include those children who have been identified as having severe (profound) mental retardation or other health-impaired conditions under the IDEA. The commenters stated that the rules "need to have many more restrictions" or they would be too expensive.

Response: The regulations require that a child's impairment(s) must substantially reduce his or her ability to perform the normal activities of childhood, not make the child completely unable to do these activities. Additionally, § 416.924c(g)(2) in these final rules (§ 416.924d(g)(2) in the prior rules) specifically states that the fact that a child is able to attend school will not, in itself, be an indication that he or she is not disabled.

There is no statutory requirement that a child have multiple impairments to be found disabled. To introduce this requirement in our regulations would be

contrary to the statute. Moreover, we do not believe that these rules are too expensive. Rather, they are the best way to fully comply with the Supreme Court's decision in *Zebley* and to implement the Act.

Multidisciplinary Assessments

Comment: We received several comments urging us to require in regulations that the State agencies use multidisciplinary teams to evaluate the evidence of children's functioning and make disability determinations. Chief among the reasons offered were that multidisciplinary assessments are common in pediatrics and professional practice in the child development and early education fields, that such assessments are often necessary to establish a diagnosis, and that the disability advocates and childhood disability experts had emphasized the importance of the role of multidisciplinary assessment during early discussions about the childhood rules.

Response: We do not agree with those commenters who thought that multidisciplinary review at the State agencies is an absolute necessity. We believe that it is far more important to require—as we did—the gathering of appropriate evidence. Once an appropriate record is established, the State agency teams are capable of doing individualized functional assessments and making childhood disability determinations, just as they are capable of assessing residual functional capacity and deciding whether an adult can do "other work" without multidisciplinary review. As we have emphasized throughout these rules, the issues of diagnosis and treatment are, in a sense, secondary; we need only know that a child has a severe medically determinable impairment that does not meet or equal the requirements of the listings, in order to cross the threshold to an individualized functional assessment. We need not necessarily know exactly what the impairment is. Our determination does not involve judgments about how to treat a child's impairments; our concern is with the severity and impact on functioning of a child's impairments as shown by the evidence.

In addition, since well before the *Zebley* decision, we had begun ensuring that the State agencies include pediatricians and other appropriate specialists on their staffs, so that all State agencies now have such individuals on the teams deciding childhood claims. We are confident that these specialists have the expertise to

properly evaluate childhood impairments.

Comment: Several of the same commenters also referred to the need to obtain multidisciplinary "consultations." A concerned parent of a child with very severe impairments also seemed to support the need to obtain multidisciplinary evidence. She explained that her son had multiple problems but that he was not diagnosed until well after age 1 and after he had been evaluated through the use of neurological testing, orthopedic evaluation, and psychological testing. She was sure that this was the case for many children.

Response: We agree with the commenters that it will often be necessary to obtain evidence from multiple kinds of sources. These include not only multiple medical sources, as described by the parent commenter, but other sources as well. This is why we have stressed the need to obtain all relevant existing evidence from the appropriate sources, which may include schools and other disability programs. We have also always permitted—and, at times, required—the purchase of consultative examinations from sources other than "acceptable medical sources," such as audiologists and speech and language therapists. However, we believe that the rules already address this issue adequately.

Comment: In a related comment, one commenter wanted to know what mechanisms we would put into place to ensure that the multidisciplinary assessments from various service providers are well-coordinated, so as not to delay processing of applications.

Response: We have always had procedures governing the development of evidence to provide guidance on the kinds of evidence to obtain and to mandate procedures for requesting evidence and ensuring that it is obtained as quickly as possible. With the publication of the "Standards for Consultative Examinations and Existing Medical Evidence" in the Federal Register on August 1, 1991 (56 FR 36932), and its accompanying manual instructions, we now provide detailed rules about whom to contact, when they should be contacted, and schedules for following up on evidence that is not immediately forthcoming. (If by "service providers" the commenter meant those who perform consultative examinations for us, the rules pertain to this kind of evidence as well.) In conjunction with the publication of the childhood rules, we developed a special questionnaire which is completed in every childhood disability claim to record the names of

nonmedical sources of a child's functioning, such as caregivers, schools, counselors, therapists, and social services caseworkers. We believe these procedures will result in a well-coordinated processing of claims.

Comment: Two commenters said that the multidisciplinary principle or approach to childhood disability evaluation was "central" to the Supreme Court's decision in *Zebley*. Two commenters thought that the regulation stated that a multidisciplinary assessment of a child's functioning shall take place, but that it did not describe in any detail what the assessment will consist of nor what is meant by "multidisciplinary." These commenters thought it very important to define and describe in detail "the multidisciplinary functional assessment that is proposed for step four in the determination process."

Response: There is no language in the *Zebley* decision which states or implies that a "multidisciplinary" approach to evaluating children's claims is required under the statute. As we have stated elsewhere, the Supreme Court did not provide any instruction on how we were to draft these rules, save that we were to provide individualized functional assessments for children comparable to the type of assessment we provide for adults. Nevertheless, as we have said, we agree that multidisciplinary evidence is valuable, and sometimes necessary, whether the Supreme Court addressed the issue or not.

With regard to the two comments that we should describe in detail the multidisciplinary approach at step four, we assume that the commenters were referring to the provisions which appears in final § 416.924c(f) (§ 416.924d(f) of the prior rules), the only section in the rules in which we use the word "multidisciplinary." The purpose of this provision was to give another example of our policy that we look not only at the individual components of a child's life but also at the child's life as a whole. Thus, the section describes children who may require more than one kind of therapy, each in itself posing a relatively small burden on the child, but cumulatively involving a substantial amount of the child's time. It does not describe a multidisciplinary approach to evaluation at step four, but how the need for multidisciplinary therapy might contribute to a finding of disability. As we have already explained, we have also retitled and renumbered the entire regulations section (from "Other factors we will consider in the individualized functional assessment," § 416.924d, to

"Other factors we will consider," § 416.924c) to make clear that this policy applies at every step of the sequence at which we assess functioning.

Payment of Childhood Disability Benefits

Comment: One commenter questioned whether it was appropriate to pay cash benefits to disabled children, as provided under title XVI, noting that the principal needs of disabled children are access to medical treatment and other interventions, and medical insurance to cover the cost of such treatment. The commenter said that we should at least give some consideration to establishing a monitoring system to ensure that benefits awarded to children are correctly utilized for the care and support of the child.

Response: We pay benefits to children pursuant to the law. Our regulations implement the law and explain in a practical way how we will abide by it. To address the appropriateness of paying cash benefits to disabled children is beyond the purview of these or any other regulations. However, it should be noted that in many States eligibility for SSI results in eligibility for Medicaid. The second part of the comment refers to our rules regarding representative payees and is also beyond the purview of these rules; we have referred the comment to the appropriate section of SSA for consideration.

Regulatory Procedures

Executive Order 12291

The regulations that we published on February 11, 1991 resulted in a major increase in costs for the Federal government. We are providing an updated regulatory impact analysis to further public understanding of the fiscal impact of the regulations published on February 11, 1991. The changes to the rules which we are publishing today do not further affect title XVI or Medicaid program or administrative costs.

Regulatory Impact Analysis

A. Introduction

The Secretary determined that the regulations published on February 11, 1991 required a Regulatory Impact Analysis under Executive Order 12291 because they would result in a major increase in costs for the Federal government. The Department has updated the Regulatory Impact Analysis to identify the cost impact and the potential benefits to society of the regulations that were published on

February 11, 1991, and to inform the public of the considerations supporting these revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a Regulatory Impact Analysis be performed on any major rule, i.e., a rule that is likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Nature of the Program

Payments to certain disabled and blind individuals are provided under title XVI of the Act, the SSI program. An individual is considered disabled if he or she is “* * * unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * * (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).”

The Supreme Court, in the *Zebley* decision, decided that SSA's prior regulations implementing the law for

evaluating disability in children did not adequately reflect Congressional intent. Implementation of the Supreme Court's decision required us to revise the rules to provide an individualized functional assessment when evaluating disability in children for purposes of eligibility for SSI payments. We discussed the method used to revise the rules, including the solicitation and consideration of comments and suggestions from child development and childhood disability experts, and others, in the section of the preamble to the rules we published on February 11, 1991 entitled “Supplementary Information” (56 FR at 5534-35).

C. Potential Benefits

The new rules for determining disability in children have resulted in increases in the number of childhood disability allowances under the SSI program. This is because we added a step to the disability evaluation process for children that permits findings of disability for children who do not have impairments that meet or equal a listing in appendix 1 of subpart P of part 404 of the regulations. For the same reason, we expect fewer terminations of payments of children already receiving SSI payments when their cases are periodically reviewed for continuing disability. Since, in many States, entitlement to SSI results in entitlement to Medicaid under title XIX of the Act,

we also have experienced increases in the number of children eligible for Medicaid.

D. Projected Costs (\$ in millions)

We have provided data based on actual experience for fiscal year (FY) 1991 and 1992. The data shown for FY 1993 incorporates actual data through June 1993 and a projected total through the end of the fiscal year. We also have prepared estimates for FY 1994 and FY 1995 based on our experience to date. We have provided data on the amount of increased benefit payments, the amount of increased administrative costs and the number of increased SSI awards. These data do not include administrative or program benefit costs for members of the *Zebley* class.

All allowances based on functional equivalence and individualized functional assessments are attributable to the changes made by the regulations we published on February 11, 1991. The number of childhood applications used in this estimate is consistent with the President's Budget. Increased administrative costs reflect the cost of processing additional functional allowances (i.e., determinations based on functional equivalence or on individualized functional assessments) and the additional processing costs associated with developing functional considerations, in addition to medical factors.

5-YEAR PROJECTED EXPENDITURES

(In millions of dollars)

	Fiscal year 1991	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	5-year total
Federal SSI benefits	90	260	570	1,030	1,485	3,435
Federal Medicaid benefits	55	65	160	215	200	695
Total Federal benefits	145	325	730	1,245	1,685	4,130
Increased Federal administrative costs	17	22	48	61	52	200
Increased SSI awards (thousands)	37	41	93	115	98	1,385

¹ Rounded to the nearest thousand.

E. Alternative Approaches

Section 3(d)(4) of Executive Order 12291 provides that a Regulatory Impact Analysis shall provide a “description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted.” Described here are various alternative approaches that we considered in the course of developing the new rule published on February 11, 1991, and for these rules that we are publishing today.

In the final analysis, we concluded that we could not have achieved the same regulatory goal (i.e., fully complying with the principles enunciated in the Supreme Court's decision in *Zebley*) at lower cost. We believe that the regulations as published are necessary to comply completely with the Supreme Court's *Zebley* decision and that the regulations are consistent with and are a reasonable interpretation of the Supreme Court's action in that case. The regulations are structured so as to provide complete and coherent rules for evaluating the disabilities of children under the Court's

decision. For that reason, we included some items not specifically mentioned by the Supreme Court, but which are a part of an integrated, rational and complete set of rules for the guidance of the public and the adjudication of children's claims. As it turned out, providing a whole set of rules for evaluating the disabilities of children, as was done in the regulations published on February 11, 1991, was the least costly way of implementing *Zebley*. As explained below, all the reasonable alternatives we considered would have been more costly than the approach we took in the regulations. Moreover, we

determined that any alternatives that would perhaps be less costly than the approach taken might run the risk of not complying fully with the Supreme Court's *Zebley* decision. A discussion of the alternatives we considered is repeated to provide better insight into the decision making process that led to the development of the regulations that were originally published on February 11, 1991.

1. *Incorporating a Screen*—We considered incorporating a screen into the regulations; i.e., including as the first step of the childhood disability evaluation process a process in which children who are manifestly disabled could be identified quickly. The screen would have been a list of specific impairments, or effects of impairments, that would result in an immediate finding of disability.

We did not include a screening list in these rules for several reasons discussed at length in the preamble to the regulations published on February 11, 1991. In short, we decided that our revision of the equivalence policy was the better option because it included the concepts of the screen, but in a more general rule. The screen list would have been only another circumscribed listing, similar to appendix 1. We believe that the option we selected provides a greater net benefit to society.

Cost Considerations. We believe that the selected option is more administratively cost-effective than the screen, inasmuch as it permits our adjudicators to quickly and efficiently identify the most obviously disabled children. The screen list also would have been administratively cost effective, but would have applied to fewer cases. However, it still would result in higher overall administrative costs than the final rules since fewer cases would be decided under the screen than under the equivalence policy, necessitating more decisions after the individualized functional assessment.

As to program costs, the screen approach (like the functional equals step) was simply intended to identify the most seriously impaired children earlier in the adjudicative sequence. Thus, neither the proposed screen approach nor the functional equals approach, which we adopted, would affect program costs since both would allow children who would be found eligible later in the sequence.

2. *Including Risk Factors*—At the suggestion of individual experts, we also considered developing rules that would establish disability for children who are not currently disabled, based on a prediction that they might become

disabled in the future because of their particular life circumstances. This approach would have been based on the premise that a combination of "risk" factors for a child with a medically determinable severe impairment(s) could affect the child's future development and that intervention now, through the assistance of SSI and the Medicaid entitlement that comes to SSI beneficiaries could help to ensure that the child would not become disabled or that the child would have the best possible chance to maximize his or her abilities.

Risk factors include such things as familial/environmental risks (for example, very young parents), health-related risks (for example, lack of proper treatment and poor parental supervision), and biological risks (for example, the child's mother had a previous neonatal death).

In an attempt to draft such a rule, we tried to incorporate risk factors as an analogous step to the fifth step of the adult evaluation sequence. At that step adults who have impairments that are not in and of themselves disabling (i.e. impairments that do not meet or equal the listings) can be found disabled because of the functional impact of nonmedical factors (i.e., their age, education, and work experience). These vocational factors can have an effect on an adult's current ability to make an adjustment to other work, or to begin work for the first time and hence, can contribute to a finding that the individual is disabled.

However, when we examined the rule we had drafted, we realized that it was not analogous to the adult rules. When we find an adult disabled based on consideration of his or her residual functional capacity and vocational factors, the adult is currently disabled, whereas a rule incorporating risk factors for children results only in a prediction of the possibility of future disability, not a finding of current disability.

Nonetheless, the regulations we have established do not fail to consider risk factors on a child's current functioning. In the case of biological risk factors, the rules provide several means for evaluating those children who are already affected by demonstrable biological problems (such as low birth weight, poor tone, and respiratory distress) in the special rules for premature infants, the functional equivalence step for those children who do not already meet or equal listed impairment(s) solely for medical reasons, and the individualized functional assessment, all of which require evaluation of the individual child's actual status. To count such

factors again, however, in the same manner as age, education, or work experience in adults, would be a double weighting of the same factors. The other kinds of risk factors may also have an observable, current impact on a child and would, to that extent, also be considered when we assess the child's actual functioning.

We believe that any other consideration of risk factors would go beyond our authority due to the statutory requirement that a child suffer from an impairment of "comparable severity" to that of an adult. Predicting future disability based on risks goes beyond comparability to the adult rules. Furthermore, it is not reliably predictive, provides no basis for future comparison for determining continuing disability, and might require us to engage in intrusive investigative practices and to make value judgments that are far beyond our purview.

Cost Considerations. The inclusion of risk factors in the manner suggested by some individual experts would have increased both program and administrative costs. Administratively, it would have resulted in additional development and investigatory procedures, as well as additional staff time justifying decisions. Because it would have granted benefits to children who are not currently disabled and who might not become disabled, it would have resulted in increased program costs; it would likely have increased program costs on continuing disability review as well. We are unable to estimate the extent of the increased costs.

3. *Limiting the Scope of the Regulations to Individualized Functional Assessment*—

• *Comparable Severity*—We considered limiting the scope of the regulations published on February 11, 1991 by simply adding a step after the meets/equals step in which adjudicators would determine, based on an individualized functional assessment, whether the child's impairment(s) is comparable in severity to one that would prevent an adult from engaging in substantial gainful activity. Under this alternative, we would not have developed the not severe step, the functional equivalence process, and the revised continuing disability review procedures. We did not adopt this alternative because it would not have achieved the same regulatory goal: to fully and fairly implement the *Zebley* decision and comply with the law by providing a process for determining whether a child's impairment(s) is of comparable severity to an impairment that would disable an adult. We found,

in reviewing the disability determination process for children and comparing it to the adult process, that simply adding a step that instructed adjudicators to assess a child's functioning and decide comparable severity would not provide a sound adjudicative process for deciding children's claims. Therefore, substantial legal support exists for not adopting this alternative.

Cost Considerations. With regard to initial cases, this alternative would not have changed the ultimate decision for any child. In other words, a child applicant, who is allowed at the functional equals step or denied at the not severe step would receive the same decision, only later in the sequence (i.e., after the individual functional assessment). However, it would have resulted in a further increase in administrative funds needed to process initial cases because it would have required that we subject every child who does not meet or medically equal a listing, including the most extremely impaired and the most minimally impaired children, to an individualized functional assessment. With regard to cessation cases, the inclusion of the revised medical improvement procedures allowed the agency to resume conducting continuing disability reviews for children, which it had not been doing since the end of February 1990. As a result, the continuing disability review rules increase administrative costs. However, these administrative costs are more than offset by program savings that would be lost if these regulations had not been published on February 11, 1991. Following is a more detailed discussion of each of the three provisions.

• **Including a "Severe" Step**—We could have published these regulations on February 11, 1991 without providing a step that permits denial based on a finding that a child's impairment(s) is not "severe." Prior to the *Zebley* decision, we did not have such a step for children; we considered only whether the child was engaging in substantial gainful activity and, if not, whether his or her medically determinable impairment(s) met or equaled in severity an impairment in the listings. Adding a severe step made the childhood and adult evaluation processes more alike and comported with the spirit of the *Zebley* decision to evaluate children comparably to adults and with our regulatory goal. In adult cases, we assess residual functional capacity only after we have found that the person has a severe impairment(s). Likewise, we believe that we must first determine that a child has an

impairment(s) that is severe before we do an individualized functional assessment.

Even though the *Zebley* decision did not expressly require the addition of this step, the tenor of the decision was that children should be treated comparably to adults and thus directed the inclusion of this step in the process. There is no indication that the Supreme Court intended that children with minimal impairments should be treated differently than adults with such impairments. Further, in *Yuckert* the Court upheld the severity concept as a legitimate way to efficiently and validly screen out de minimis claims.

We could have achieved the same regulatory result without this step, but at a higher administrative cost. The step has increased the efficiency and reliability of the disability evaluation process by identifying those children whose impairments are so slight that they would not be found eligible even if we were to proceed to the more costly and time-consuming individualized functional assessment step.

Cost Considerations. There is no program benefit cost impact. The program cost would have been the same even if we had not included the step. Approximately 10 percent of childhood disability claimants are denied because their impairments do not more than minimally affect their ability to function in an age-appropriate manner. However, because their impairments are minimal these children would have been denied at the comparable severity step (step 4). Administrative savings have occurred because it was not necessary to conduct individualized functional assessments for children with no more than minimal impairments. The inclusion of the severe step has saved approximately \$3.8 million per year in administrative costs.

• **Including a Functional Equivalence Process**—Our former policy on making equivalence determinations was criticized by the Supreme Court in *Zebley* because the policy did not adequately cover combinations of impairments, the effects of symptoms, and the effects of medication, among other things. The functional equivalence policy responds to each of these criticisms. Moreover, the U.S. District Court for the Eastern District of Pennsylvania (where the *Zebley* case was remanded) approved an interim standard on May 5, 1990, which required the consideration of a child's functioning and a comparison of this functional assessment with the functional consequences of impairments in the listings. The functional equivalence concept that was

incorporated into our regulations on February 11, 1991 is also suggested by the listings themselves, which describe overall impairments of functioning (for example, a young child not functioning at one-half his or her chronological age) as well as specific functional impairments (for example, blindness).

Nevertheless, we could have devised rules that did not include functional equivalence, yet achieve the same outcome following an individualized functional assessment. However, aside from the foregoing reasons supporting the need for the rule, the functional equivalence process also has provided administrative advantages as it allowed us to make determinations of disability on the obvious functionally-impaired children without making us or them go through the complete development and documentation required under the individualized functional assessment. Therefore, it achieved our regulatory goal at the lowest cost.

Cost Considerations. Program costs are not affected. However, administrative savings have occurred because the process is less complex than the comprehensive individualized functional assessment and has allowed the most severely impaired children to be paid earlier in the process. We estimate that the functional equivalence process has saved approximately \$1.5 million per year in administrative funds.

• **Including Continuing Disability Review Process**—The *Zebley* decision did not explicitly mandate a revision of the continuing disability review process for children. However, our former rules for determining whether a child's disability continues contained the same policy that was struck down by the Supreme Court. In fact, the named plaintiff in *Zebley* was a child whose SSI benefits had been terminated. Therefore, there was no alternative to revising the continuing disability review rules; only whether we would make the change with the publication of the rule on February 11, 1991 or at a later date. Furthermore, individual experts who assisted us agreed that it was important that we have a mechanism to periodically reevaluate childhood claims because children can change rapidly. It was essential that we be able to reassess the functioning of eligible children as they age against the activities and behaviors appropriate to their age group.

Cost Considerations. The volume of continuing disability reviews and the administrative costs associated with such reviews will increase over the next 5 years because more children have been awarded benefits under the rules

published on February 11, 1991. Initially, we expect that the rate of cessations will be somewhat lower than in the past because a large proportion of all children currently on the rolls was found disabled because they had impairments that met or equaled the listings. Fewer of these children will be found no longer disabled, even if their impairments have medically improved, because they will now benefit from the incorporation of functional steps into the medical improvement review standard.

Many of the additional allowances since the regulations were published in February 1991 and many future allowances will be based on functional impairments that are medically less severe than the listings; therefore, the rate of cessation for this population may be somewhat higher than it was when the eligibility criteria for children were based only on the listings. Program costs would be higher if the continuing disability review process was not included in the regulations. The program savings associated with processing childhood continuing disability reviews exceed the administrative cost.

F. Executive Order 12291, Section 2, General Requirements

The foregoing discussions demonstrate that our objective in the regulations published on February 11, 1991 was to provide the greatest potential benefits to society at the least net cost, by providing efficient, comprehensive, and up-to-date rules for identifying and assisting children who have impairments of comparable severity to impairments that would disable adults.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only individuals and States. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act

These final regulations do not contain specific reporting requirements which are subject to approval by the Office of Management and Budget (OMB). However, § 416.924 contains a description of the information we collect as a result of *Sullivan v. Zebley*. We already have OMB clearance to use form SSA-3881 (OMB Number 0960-0499) to collect this information.

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

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Supplemental security income, Reporting and recordkeeping requirements.

Dated: March 23, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: May 24, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416, subpart I, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

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

1. The authority citation for subpart I continues to read as follows:

Subpart I—Determining Disability and Blindness

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.902 is amended by adding the following two definitions to the beginning of the alphabetical listing of definitions:

§ 416.902 General definitions and terms for this subpart.

As used in this subpart—

Adult means a person who is age 18 or older.

Child means a person who has not attained age 18.

* * * * *

3. Section 416.903 is amended by adding a new paragraph (f) to read as follows:

§ 416.903 Who makes disability and blindness determinations.

* * * * *

(f) *Determinations for childhood impairments.* In making a determination under title XVI with respect to the disability of a child to whom paragraph (e) of this section does not apply, we will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the case of the child.

4. Section 416.913 is amended by adding paragraph (c)(3) and revising paragraphs (e) (2) and (3) to read as follows:

§ 416.913 Medical evidence of your impairment.

* * * * *

(c) *Statements about what you can still do.* * * *

(3) If you are a child, the medical source's opinion about your physical or mental abilities to function independently, appropriately, and effectively in an age-appropriate manner, as described in § 416.924d.

* * * * *

(e) *Information from other sources.*

* * *

(2) Observations by people who know you (for example, spouses, parents and other caregivers, siblings, other relatives, friends or neighbors, clergy);

(3) Other practitioners (for example, nurse practitioners and physicians' assistants, naturopaths, and chiropractors);

* * * * *

5. Section 416.916 is revised to read as follows:

§ 416.916 If you fail to submit medical and other evidence.

You (and if you are a child, your parent, guardian, relative, or other person acting on your behalf) must cooperate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

6. Section 416.924 is revised to read as follows:

§ 416.924 How we determine disability for children.

(a) *Definition of comparable severity.* If you are a child, we will find you disabled if you are not engaging in substantial gainful activity and you have an impairment or combination of impairments that is of comparable severity to an impairment or combination of impairments that would disable an adult and which meets the duration requirement (see § 416.909). By the term *comparable severity*, we mean that your physical or mental impairment(s) so limits your ability to function independently, appropriately, and effectively in an age-appropriate manner that your impairment(s) and the

limitations resulting from it are comparable to those which would disable an adult. Specifically, your impairment(s) must substantially reduce your ability to—

(1) Grow, develop, or mature physically, mentally, or emotionally and, thus, to attain developmental milestones (see § 416.924b(b)(2)) at an age-appropriate rate; or

(2) Grow, develop, or mature physically, mentally, or emotionally and, thus, to engage in age-appropriate activities of daily living (see § 416.924b(b)(3)) in self-care, play and recreation, school and academics, community activities, vocational settings, peer relationships, or family life; or

(3) Acquire the skills needed to assume roles reasonably expected of adults (see § 416.924b(b)(4)).

(b) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination or decision whether you are disabled. If you allege more than one impairment, we will evaluate all the impairments for which we have evidence. Thus, we will consider the combined effects of all your impairments upon your overall health and ability to function. We will also evaluate any limitations in your ability to function that result from your symptoms, including pain (see § 416.929). When you file a claim, we use the evaluation process set forth in (c) through (f) of this section. We follow a set order to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled and not review your claim further. If you are not doing substantial gainful activity, we will consider your physical or mental impairment(s) first to see if you have an impairment or combination of impairments that is severe. If your impairment(s) is not severe, we will determine that you are not disabled and not review your claim further. If your impairment(s) is severe, we will review your claim further to see if you have an impairment(s) that meets or equals in severity any impairment that is listed in appendix 1 of subpart P of part 404 of this chapter, in which case we will find you disabled. If you do not have such an impairment(s), we will do an individualized functional assessment and determine whether you are disabled. Once you have been found eligible for disability benefits, we follow a somewhat different procedure to determine whether your eligibility continues, as explained in § 416.994a.

(c) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find

that you are not disabled regardless of your medical condition or age, education, or work experience. (For our rules on how we decide whether you are engaging in substantial gainful activity, see §§ 416.971 through 416.976.)

(d) *You must have a severe impairment(s).* If your impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal limitation in your ability to function independently, appropriately, and effectively in an age-appropriate manner, we will find that you do not have a severe impairment and are, therefore, not disabled.

(e) *When your impairment(s) meets or equals a listed impairment in appendix 1.* The Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter is set at a level of severity that precludes any gainful activity or that is comparable in severity to an impairment that would preclude an adult from engaging in any gainful activity. Therefore, if you have an impairment(s) which meets the duration requirement and is listed in appendix 1, or is equal to a listed impairment, we will find you disabled. We will not deny your claim on the basis of a finding that your impairment(s) does not meet the requirements for any listed impairment or is not equal in severity to any of the impairments listed in appendix 1. We explain our rules for deciding whether an impairment meets a listing in § 416.925. Our rules for how we decide whether an impairment(s) equals a listing are set forth in § 416.926a.

(f) *Your impairment(s) must be of comparable severity to an impairment(s) that would disable an adult.* When we determine that your impairment(s) is severe, but that it does not meet or equal in severity any listed impairment, we will assess the impact of your impairment(s) on your overall ability to function independently, appropriately, and effectively in an age-appropriate manner. We will use this individualized functional assessment to decide whether you have an impairment(s) of comparable severity to an impairment(s) that would prevent an adult from engaging in substantial gainful activity and, thus, to determine whether or not you are disabled. We will use the individualized functional assessment in the following manner:

(1) If:

(i) Our evaluation of all the evidence in your claim shows that your impairment(s) substantially reduces your physical or mental ability to function independently, appropriately, and effectively in an age-appropriate manner, and

(ii) Your impairment(s) meets the duration requirement, we will find you disabled.

(2) If we find that your impairment(s) does not substantially reduce your physical or mental ability to function independently, appropriately, and effectively in an age-appropriate manner, or if your impairment(s) does not meet the duration requirement, we will find that you are not disabled.

(g) *Basic considerations.* When we determine whether you are disabled, we will consider all relevant evidence in your case record. This may include medical evidence, school records, information from people who know you and can provide evidence about your functioning—such as your parents, caregivers, and teachers—and other evidence that can help us assess your functioning on a longitudinal basis.

(1) Medical evidence of your impairment(s) must describe symptoms, signs, or laboratory findings. The medical evidence may include formal testing that provides information about your development or functioning in terms of percentiles, percentages, standard deviations, or chronology (such as months of delay). Whenever possible, a medical source's findings should reflect consideration of information from your parents or other people who know you, as well as the medical source's findings and observations on examination; any discrepancies between formal test results and your customary behavior and daily activities should be duly noted and resolved.

(2) Your functional limitations may also be observed and reported by others. Parents (or other caregivers), and other family members may provide important evidence on how well you are functioning on a day-to-day basis. Educational and other intervention programs may be important sources of evidence about your functioning, and will often have documentary evidence in the form of evaluation instruments and other evidence from a variety of disciplines.

7. Section 416.924a is revised to read as follows:

§ 416.924a Age as a factor of evaluation in childhood disability.

(a) *General.* In this regulation, we explain how we consider age when we decide whether you are disabled. Your age may or may not be a factor in our determination whether your impairment(s) meets or equals a listing, depending on the listing we use for comparison. However, your age is always an important factor when we decide whether your impairment(s) is

severe (see § 416.924(d)) or whether you are disabled based on an individualized functional assessment (see § 416.924(f)). Except in the case of certain premature infants, as described in paragraph (c) of this section, age means chronological age.

(1) When we determine whether you have an impairment or combination of impairments that is severe, we will always consider the significance of your impairment(s) in relation to your age.

(2) The Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter contains examples of impairments that we consider of such significance that they prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. Therefore, we will usually decide whether your impairment meets a listing without giving special consideration to your age. However, several listings are divided into age categories. If the listing appropriate for evaluating your impairment includes such age categories, we will evaluate your impairment under the criteria for your age when we decide whether your impairment meets that listing.

(3) When we compare an unlisted impairment or combination of impairments with a listed impairment to determine whether you have an impairment(s) which equals a listing, the way in which we consider your age will depend on the listing we use for comparison. We will use the same principles for considering your age as in paragraph (a)(2) of this section; that is, we will consider your age only if we are comparing your impairment(s) to a listing that includes specific age categories.

(4) When we determine whether you have an impairment(s) which, though not meeting or equaling the listings, is of comparable severity to an impairment that would disable an adult, we will always consider the significance of your impairment(s) in relation to your age. We will consider the functions, behaviors, and activities that are appropriate to your age, and will evaluate the effect of your impairment(s), either alone or in conjunction with other relevant factors, on your ability to perform these functions, behaviors, and activities. (We explain how we do this individualized functional assessment in §§ 416.924d and 416.924e.)

(5) In any disability determination, we will consider your age and whether it affects your ability to be tested. Even when your impairment(s) is not amenable to formal testing because of your age, we will consider all evidence

that will help us decide whether you are disabled.

(b) *Age categories.* When we determine whether you are functioning independently, appropriately, and effectively in an age-appropriate manner, we will consider your age in the following categories:

(1) Newborn and young infants (birth to attainment of age 1).

(2) Older infants and toddlers (age 1 to attainment of age 3).

(3) Children (age 3 to attainment of age 18), considered according to the following subcategories:

(i) Preschool children (age 3 to attainment of age 6).

(ii) School-age children (age 6 to attainment of age 12).

(iii) Young adolescents (age 12 to attainment of age 16), and

(iv) Older adolescents (age 16 to attainment of age 18).

(c) *Correcting chronological age of premature infants.* We generally use chronological age (that is, a child's age based on birth date) when we decide whether, or the extent to which, a physical or mental impairment(s) affects a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. However, if you were born prematurely, we may consider you to be younger than your chronological age. When we evaluate the development or linear growth of a child born prematurely, we may use a "corrected" chronological age; that is, the chronological age adjusted by a period of gestational prematurity. We consider an infant born at less than 37 weeks' gestation to be born prematurely.

(1) We apply a corrected chronological age in these situations—

(i) When we evaluate developmental delay in premature children until the child's prematurity is no longer a relevant factor; generally no later than about chronological age 2 (see paragraph (c)(2) of this section);

(ii) When we evaluate an impairment of linear growth, such as under the listings in § 100.00 in appendix 1 of subpart P of part 404 of this chapter, until the child is 12 months old. In this situation, we refer to neonatal growth charts which have been developed to evaluate growth in premature infants (see paragraph (c)(2) of this section).

(2) We compute a corrected chronological age as follows—(i) If you have not attained age 1, we will correct your chronological age. We compute the corrected chronological age by subtracting the number of weeks of prematurity (i.e., the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation)

from your chronological age. The result is your corrected chronological age.

(ii) If you are over age 1, have a developmental delay, and prematurity is still a relevant factor in your case (generally, no later than about chronological age 2), we will decide whether to correct your chronological age. Our decision will be based on our judgment and all the facts of your case. If we decide to correct your chronological age, we may correct it by subtracting the full number of weeks of prematurity or a lesser number of weeks. We will also decide not to correct your chronological age if we can determine from the evidence that your developmental delay is the result of your medically determinable impairment(s) and is not attributable to your prematurity.

(3) Notwithstanding the provisions in paragraph (c)(1) of this section, we will not compute a corrected chronological age if the medical evidence shows that your treating source or other medical source has already taken your prematurity into consideration in his or her assessment of your development. Also, we will not compute a corrected chronological age when we find you disabled using the examples of functional equivalence based on low birth weight in § 416.926a(d) (8) or (9).

(d) *Age and the impact of severe impairments on younger children and older adolescents.* Although a child may become disabled at any age, impairments of similar severity may have different effects on children of different ages. The following guidelines apply to determinations of disability for children of different ages, especially very young children and children approaching adulthood.

(1) We recognize that how a particular child adapts to an impairment(s) depends on many factors (e.g., the nature and severity of the impairment(s), the child's temperament, the quality of adult intervention, and the child's age at onset of the impairment(s)). By *adapting to an impairment*, we mean the child's ability to learn those skills, habits, or behaviors which allow the child to compensate for the impairment(s) and, thus, to function in an age-appropriate manner as well as possible despite the impairment(s). Therefore, our disability determination will consider how you are adapting to your impairment(s) and the extent to which you are able to function independently, appropriately, and effectively in an age-appropriate manner as set forth in this section and §§ 416.924 and 416.924c through 416.924e.

(2) When we decide whether you are disabled, we will generally consider the factor of age in a manner opposite from that described in the rules for determining whether an adult has the ability to adjust to other work (see §§ 416.920(f) and 416.963). Thus, we consider that the older a child is, the more he or she is like a younger adult; we consider an older adolescent (i.e., a child aged 16 to 18) to be most like a "younger person" (i.e., a person in the age category 18 to 45 (see § 416.963(b)), and younger children to be most like older adults in terms of the significance of their impairments.

(3) Although various kinds of growth and development occur throughout childhood and adolescence, the earliest years, from birth to approximately attainment of age 6, are characterized by complex and rapid changes; for example, learning to walk, talk, and care for basic physical and emotional needs.

(i) The development of fundamental skills is a cumulative process founded upon skills acquired at each stage of a child's life. A child's ability to acquire or perform these skills ultimately determines his or her ability to master learning tasks in school and more complex physical activities and, eventually, affects the ability to work. Therefore, deficits of function resulting from impairments that occur before the attainment of age 6 may have a potentially greater, more limiting effect on a child's overall growth and development than impairments that occur later in life; and such deficits are increasingly significant with decreasing age.

(ii) Furthermore, the mastery of skills in early childhood is a highly interactive and interdependent process within a child. This interdependence is especially true of development in certain areas; e.g., cognitive skill deficits may affect communication, and social and emotional deficits may affect cognitive and communicative development. This interdependent process also requires proper functioning in areas that may not be obviously relevant to the acquisition of the skill. For example, physical mobility is affected by how well a child sees; therefore, visual impairment, especially in a young child, can affect the way a child acquires certain motor skills even though the child does not have a specific motor impairment. Similarly, emotional bonding to parents can be affected by how well a child hears. Therefore, the impact of such seemingly isolated impairments can have implications for the overall development of the youngest children.

(4) As children approach adulthood—that is, by about age 16—the functional abilities, skills, and behaviors that are age-appropriate for them are those that are also age-appropriate for 18-year-olds, i.e., those that are needed to assume roles reasonably expected of adults. Older adolescents generally also share with the youngest adults the same abilities to adapt to work-related activities despite a severe impairment(s).

(i) By the age of adolescence, children have developed basic physical and mental skills and behaviors, so that impairments occurring in adolescence may not have the cumulative interactive effects on functioning that impairments occurring in infancy and early childhood do. (However, as set forth in paragraph (d)(1) of this section, we also recognize that young and older adolescents may experience a variety of impairments with different effects on their ability to function in an age-appropriate manner. For instance, a child born with a degenerative disorder may experience a worsening of its effects as he or she grows older so that functioning is more limited for the older child than it is for a younger child with the same illness or disorder.)

(ii) Inasmuch as age-appropriate functioning for an older adolescent is also that of an 18-year-old young adult, the disability determination for an older adolescent must be consistent with the disability determination we would make for an 18-year-old person having the same functional limitations.

8. Section 416.924b is revised to read as follows:

§ 416.924b Functioning in children.

(a) *General.* When we evaluate your functioning, we will consider all of your mental and physical limitations that result from your impairment(s). We will evaluate the extent to which you can engage in age-appropriate activities in an independent, appropriate, and effective manner and, when applicable, whether you can do these things on a sustained basis appropriate to your age.

(b) *Terms used to describe functioning—*(1) *Age-appropriate activities.* As used in these regulations, the term *age-appropriate activities* is a comprehensive term that refers to what a child is expected to be able to do given his or her age. A child's activities may be described in terms of the achievement of "developmental milestones," "activities of daily living," or other such terms. Information about a child's activities creates a profile of how the child is functioning, i.e., what a child does, and thus what he or she is able to do. This makes possible a

comparison between the child's profile and the activities that are age-appropriate for that child.

(2) *Developmental milestones.* The term *developmental milestones* refers to a child's expected principal developmental achievements at particular points in time. Ordinarily, failures to achieve developmental milestones are the most important indicators of impaired functioning from birth until the attainment of age 3, although they may be used to evaluate older children, especially preschool children.

(3) *Activities of daily living.* The term *activities of daily living* refers to those activities of children that involve continuity of purpose and action, and goal or task orientation; that is, the practical implementation of skills mastered at earlier ages. Ordinarily, activities of daily living are the most important indicators of functional limitations in children aged 3 to attainment of age 16, although they may be used to evaluate children younger than age 3.

(4) *Work-related activities.* The term *work-related activities* refers to those physical and mental activities that are associated with, or related to, activities in the workplace, as manifested in a person's activities in age-appropriate contexts, such as school, work, vocational programs, and organized activities. Ordinarily, inability to perform work-related activities is the most important indicator of impaired functioning in older adolescents, aged 16 to attainment of age 18.

(5) *Domains and behaviors.* The terms *developmental domains, functional domains, and behaviors*, which we use when we perform an individualized functional assessment, refer to broad areas of functioning that can be identified in infancy and traced throughout a child's growth and maturation into adulthood. The domains describe the child's major spheres of activity—i.e., physical, cognitive, communicative, social/emotional, and personal/behavioral. In addition, there are certain areas of behavior that are applicable to specific age categories (i.e., responsiveness to stimuli; concentration, persistence, and pace). The domains and behaviors we use in these regulations are intended to encompass and reflect all the things that a child may do at any particular age, and are, therefore, intended to include all of a child's functioning. All the effects of a child's impairment(s) on daily functioning will be considered within these domains and behaviors. The presence of pain or other symptoms can adversely affect functioning in the

domains or behaviors. In these regulations, the term *developmental domains* is generally used when we discuss the functioning of younger children, i.e., from birth to age 3; the term *functional domains* is generally used when we discuss older children and adolescents, i.e., from age 3 to age 18. (See § 416.924d for descriptions of the various domains and behaviors as they pertain to the different age categories.)

9. Section 416.924c is revised to read as follows:

§ 416.924c Other factors we will consider.

(a) *General.* When we evaluate how you are able to function, we will consider all factors that are relevant to the evaluation of the effects of your impairment(s) on your functioning, such as the effects of your medications, the setting in which you live, your need for assistive devices, and your functioning in school. Therefore, when we assess the effect of your impairment(s) on your functioning, we will consider all evidence from medical and nonmedical sources—such as your parents, teachers, and other people who know you—that can help us to understand how your impairment(s) affects your ability to function, and help us to assess your functioning within the domains and behaviors (see § 416.924b(b)(5)). Some of the factors we will consider include, but are not limited to, the factors in paragraphs (b) through (g) of this section.

(b) *Chronic illness.* If you have a chronic impairment(s) that is characterized by episodes of exacerbation (worsening) or remission (improvement), we will consider the frequency and severity of your episodes of exacerbation and your periods of remission as factors in our determination of your overall ability to function. For instance, if you require repeated hospitalizations or frequent outpatient care with supportive therapy for a chronic impairment(s), we will consider this need for treatment in our determination. When we determine whether you can function independently, appropriately, and effectively in an age-appropriate manner, we will consider how the level of treatment you need for your chronic illness affects your functioning. We will consider whether the length and frequency of your hospitalizations or episodes of exacerbation significantly interfere with your overall functioning on a longitudinal basis, or whether your outpatient care (because of its frequency, effects on your functioning, or both) significantly interferes with your activities of daily living.

(c) *Effects of medication.* We will consider the effects of medication on your symptoms, signs, and laboratory findings, including your ability to function. Although medications may control the most obvious manifestations of your condition(s), they may or may not affect the functional limitations imposed by your impairment(s). If your symptoms or signs are reduced by medications, we will consider whether you have any functional limitations which may nevertheless persist, even if there is apparent improvement from the medications. We will also consider whether your medications create any side effects which cause or contribute to your functional limitations.

(d) *Effects of structured or highly supportive settings.* Children with severe impairments may spend much of their time in structured or highly supportive settings. A structured or highly supportive setting may be your own home, in which family members make extraordinary adjustments to accommodate your impairment(s); or your classroom at school, whether a regular class in which you are accommodated or a special classroom; or a residential facility or school where you live for a period of time. Children with chronic impairments also commonly have their lives structured in such a way as to minimize stress and reduce their symptoms or signs, and may be relatively free of obvious symptoms or signs of impairment; others may continue to have persistent pain, fatigue, decreased energy, or other symptoms or signs, though at a lesser level of severity. Such children may be more impaired in their overall ability to function in an age-appropriate manner than their symptoms and signs would indicate. Therefore, if your symptoms or signs are controlled or reduced by the environment in which you live, we will consider your ability to function independently, appropriately, and effectively in an age-appropriate manner outside of this highly structured setting.

(e) *Adaptations.* We will consider the nature and extent of any other adaptations that are made for you in order to enable you to function. Such adaptations may include assistive devices, appliances, or technology. Some adaptations may enable you to function normally, or almost normally (e.g., eyeglasses, hearing aids). Others may increase your ability to function, even though you may still have limitations in your ability to function in an age-appropriate manner (e.g., ankle-foot orthoses, hand or foot splints, and specially adapted or custom-made tools, utensils, or devices for self-care activities such as bathing, feeding,

toileting, and dressing). When we evaluate your overall ability to function with an adaptation, we will consider the degree to which the adaptation enables you to function independently, appropriately, and effectively in an age-appropriate manner.

(f) *Time spent in therapy.* You may need frequent and ongoing therapy from one or more kinds of health care professionals in order to maintain or improve your functional status. Therapy may include occupational, physical, or speech and language therapy, special nursing services, psychotherapy, or psychosocial counseling. Frequent and continuous therapy, although intended to improve your functioning, may also interfere significantly with your opportunities to engage in, and sustain, age-appropriate activities. If you receive such therapy at school during a normal school day, it may or may not interfere significantly with your doing age-appropriate activities. If you must frequently interrupt your activities at school or at home for therapy, these interruptions may interfere with your development and age-appropriate functioning. When we determine whether you can function independently, appropriately, and effectively in an age-appropriate manner, we will consider the frequency of any multidisciplinary therapy that you must have, how long you have needed the therapy or will need the therapy, and the extent to which it interferes with your age-appropriate functioning.

(g) *School attendance.* (1) School records and information from people at school who know you or who have examined you, such as teachers and school psychologists, psychiatrists, or therapists, may be important sources of information about your impairment(s) and its effect on your ability to function. If you attend school, we will consider this evidence when it is relevant and available to us.

(2) The fact that you are able to attend school will not, in itself, be an indication that you are not disabled. We will consider the circumstances of your school attendance, such as your ability to function independently, appropriately, and effectively in a regular classroom setting in an age-appropriate manner. Likewise, the fact that you are in a special education classroom setting, or that you are not in such a setting, will not in itself establish your actual limitations or abilities. We will consider the fact of such placement or lack of placement in the context of the remainder of the evidence in your case record.

(3) However, if you are unable to attend school on a regular basis because of your impairment(s), we will consider this when we determine whether you are able to function independently, appropriately, and effectively in an age-appropriate manner.

(h) *Treatment and intervention, in general.* With adequate treatment or intervention, some children not only have their symptoms and signs reduced, but also return to or achieve a level of functioning that is consistent with the norms for their age. We will, therefore, evaluate the effects of your treatment or intervention to determine the actual outcome of the treatment or intervention in your particular case.

10. Section 416.924d is revised to read as follows:

§ 416.924d Individualized functional assessment for children.

(a) *General.* If your impairment(s) is severe, but does not meet or equal in severity any of the listings in appendix 1 of subpart P of part 404 of this chapter, we will do an individualized functional assessment to determine whether you have an impairment or combination of impairments which would nevertheless be of comparable severity to an impairment(s) that would disable an adult. When we assess your functioning, we will consider all information in your case record that can help us determine the impact of your impairment(s) on your physical and mental functioning. We will consider the nature of your impairment(s), your age, your ability to be tested given your age, your ability to perform age-appropriate daily activities, and other relevant factors. (See §§ 416.924a through 416.924c.) We will assess the extent to which you are able to function independently, appropriately, and effectively in an age-appropriate manner despite your impairment(s), and use this assessment to determine whether you are disabled.

(b) *Responsibility for individualized functional assessment.* In cases where the State agency or other designee of the Secretary makes the initial or reconsideration disability determination, a State agency staff medical or psychological consultant or other designee of the Secretary (see § 416.1016) has the overall responsibility for the individualized functional assessment. This assessment is based on all of the evidence we have, from all sources, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by

the Secretary. For cases in the disability hearing process, the responsibility for the individualized functional assessment rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Associate Commissioner for Disability or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for the individualized functional assessment rests with the Administrative Law Judge or Appeals Council.

(c) *Domains of development or functioning.* The following are the domains of development or functioning, or specific behaviors, that may be addressed in an individualized functional assessment:

- (1) Cognition;
- (2) Communication;
- (3) Motor abilities;
- (4) Social abilities;
- (5) Responsiveness to stimuli (in children from birth to the attainment of age 1);
- (6) Personal/behavioral patterns (in children from age 1 to the attainment of age 18); and
- (7) Concentration, persistence, and pace in task completion (in children from age 3 to the attainment of age 18).

(d) *How we use the domains.* (1) When we do an individualized functional assessment, we will consider the extent of your impairment-related limitations in the domains or behaviors affected by your impairment(s), and how well you are able to do age-appropriate activities despite your limitations. We will also consider how your impairment(s) in one domain affects your development or functioning in other domains.

(2) We will consider whether any help or intervention that you need from others to enable you to do any particular activity is appropriate to your age.

(3) The guidelines in paragraphs (e) through (j) of this section describe, in terms of the age categories outlined in § 416.924a(b), the domains of development or functioning and the behaviors used in doing an individualized functional assessment, and the general kinds of age-related activities that may be affected by your impairment(s). (See § 416.924a(a)(5) for guidelines on age and a child's ability to be tested, and § 416.924e for guidelines for determining disability using an individualized functional assessment.)

(e) *Newborns and young infants (birth to attainment of age 1).* Children in this age group are evaluated in an

individualized functional assessment in terms of four developmental domains and an area of behavior important to newborns and young infants.

(1) Cognitive development, e.g., your ability to begin to organize and regulate how you feel and the ways you react to your environment;

(2) Communicative development (includes speech and language), e.g., your ability to communicate spontaneously and with intention through visual, motor, and vocal exchanges;

(3) Motor development (includes gross and fine motor skills), e.g., your ability to explore your environment by moving your body, and your ability to manipulate your environment by using your hands;

(4) Social development, e.g., your ability to form patterns of self-regulation, to form and maintain intimate relationships with your primary caregivers, and to exchange a variety of age-appropriate emotional cues and begin to organize intentional behavior;

(5) Responsiveness to stimuli, i.e., your ability to respond appropriately to stimulation, e.g., visual, auditory, and tactile.

(f) *Older infants and toddlers (age 1 to attainment of age 3).* Children in this age group are evaluated in an individualized functional assessment in terms of five developmental domains.

(1) Cognitive development, e.g., your ability to understand by responding to increasingly complex requests, instructions or questions, by referring to yourself and things around you by pointing and eventually by naming, and by copying things or imitating actions shown to you by others, and by knowing what you want, as illustrated, for example, by searching for a toy or asking for a special food;

(2) Communicative development (includes speech and language), e.g., your ability to communicate your wishes or needs by using gestures or pretend play, and by understanding, imitating, and using an increasing number of intelligible words, and eventually forming two-to-four word sentences in spontaneous, interactive conversation;

(3) Motor development (includes gross and fine motor skills), e.g., your ability to move in your environment using your body with steadily increasing dexterity and independence from support by others, and your ability to use your hands to do something that you want or get something that you need;

(4) Social development, e.g., your ability to express normal dependence

upon, and intimacy with, your primary caregivers, as well as increasing independence from them, to initiate and respond to a variety of age-appropriate emotional cues, and to regulate and organize emotions and behaviors;

(5) Personal/behavioral development, e.g., your ability to help yourself and to cooperate with others in taking care of your personal needs, in adapting to your environment, in responding to limits, and in learning new skills.

(g) *Preschool children (age 3 to attainment of age 6)*. Children in this age group are evaluated in an individualized functional assessment in terms of five developmental domains and an area of behavior important to preschool children.

(1) Cognitive development, e.g., your ability to understand, to reason and to solve problems, and to use acquired knowledge and concepts;

(2) Communicative development (includes speech and language), e.g., your ability to communicate by telling, requesting, predicting, and relating information, by following and giving directions, by describing actions and functions, and by expressing your needs, feelings, and preferences in a spontaneous, interactive, and increasingly intelligible manner, using simple sentences in grammatical form;

(3) Motor development (includes gross and fine motor skills), e.g., your ability to move and use your arms and legs in increasingly more intricate and coordinated activity, and your ability to use your hands with increasing coordination to manipulate small objects during play.

(4) Social development, e.g., your ability to initiate age-appropriate social exchanges and to respond to your social environment through appropriate and increasingly complex interpersonal behaviors, such as showing affection, sharing, cooperating, helping, and relating to other children as individuals or as a group;

(5) Personal/behavioral development, e.g., your ability to help yourself and to cooperate with others in taking care of your personal needs, in adapting to your environment, in responding to limits, and in learning new skills;

(6) Concentration, persistence, and pace, e.g., your ability to engage in an activity, such as dressing or playing, and to sustain the activity for a period of time and at a pace appropriate to your age.

(h) *School-age children (age 6 to attainment of age 12)*. Children in this age group are evaluated in an individualized functional assessment in terms of five functional domains and an

area of behavior important to school-age children.

(1) Cognitive function, e.g., your ability to progress in learning the skills involved in reading, writing, and mathematics;

(2) Communicative function (includes speech and language), e.g., your ability to communicate pragmatically (i.e., to meet your needs) and conversationally (i.e., to exchange information and ideas with peers and family or with groups such as your school classes) in a spontaneous, interactive, sustained, and intelligible manner;

(3) Motor function (includes gross and fine motor skills), e.g., your ability to engage in the physical activities involved in play and physical education, appropriate to your age;

(4) Social function, e.g., your ability to play alone, or with another child, or in a group; to initiate and develop friendships, to respond to your social environments through appropriate and increasingly complex interpersonal behaviors, such as empathizing with others and tolerating differences; and to relate appropriately to individuals and groups (e.g., siblings, parents or caregivers, peers, teachers, school classes, neighborhood groups);

(5) Personal/behavioral function, e.g., your ability to help yourself and to cooperate with others in taking care of your personal needs and safety; to respond appropriately to authority and school rules; to manifest a sense of responsibility for yourself and respect for others; to adapt to your environment; and to learn new skills;

(6) Concentration, persistence, and pace, e.g., your ability to engage in an activity, such as playing or reading, and to sustain the activity for a period of time and at a pace appropriate to your age.

(i) *Young adolescents (age 12 to attainment of age 16)*. Children in this age group are evaluated in an individualized functional assessment in terms of five functional domains and an area of behavior important to young adolescents.

(1) Cognitive function, e.g., your ability to progress in applying the skills involved in reading, writing, and mathematics; your conceptual growth, reasoning and problem-solving abilities;

(2) Communicative function (includes speech and language), e.g., your ability to communicate pragmatically (i.e., to meet your needs) and to converse spontaneously and interactively, expressing complex thoughts with increasing vocabulary in all communication environments (e.g., home, classroom, playground, extra-curricular activities, job) and with all

communication partners (e.g., parents or caregivers, siblings, peers, school classes, teachers, other authority figures);

(3) Motor function (includes gross and fine motor skills), e.g., your ability to engage in the physical activities involved in physical education, sports, and social events appropriate to your age;

(4) Social function, e.g., your ability to initiate and develop friendships, to relate appropriately to individual peers and adults and to peer and adult groups, and to reconcile conflicts between yourself and peers or family members or other adults outside your family;

(5) Personal/behavioral function, e.g., your ability to help yourself in taking care of your personal needs and safety, to respond appropriately to authority and school rules, to manifest a sense of responsibility for yourself and respect for others; to adapt to your environment; and to learn new skills;

(6) Concentration, persistence, and pace, e.g., your ability to engage in an activity, such as studying or practicing a sport, and to sustain the activity for a period of time and at a pace appropriate to your age.

(j) *Older adolescents (age 16 to attainment of age 18)*. (1) Descriptive information about your activities of daily living will tell us about the nature and age-appropriateness of your activities with respect to your cognitive functioning, communicative functioning, motor functioning, social functioning, personal/behavioral functioning, and your concentration, persistence, and pace in school or work-related activities. (See 416.924d(i) (1) through (6) for a description of these domains and behaviors.)

(2) As you approach adulthood (i.e., beginning at about age 16), we will consider some of your school activities as evidence of your ability to function in a job setting. For example, we will consider your ability to understand, carry out, and remember simple instructions and work-like procedures in the classroom as evidence of your ability to do these things in a job. We will consider your ability to communicate spontaneously, interactively, and age-appropriately in the classroom as evidence of your ability to do this in a job. We will consider your ability to maintain attention for extended periods of time and to sustain an ordinary daily routine without special supervision as evidence of your ability to do these things in a job. We will consider your ability to deal with authority figures and to follow directions in school, responding appropriately to correction or criticism,

as evidence of your ability to deal with supervision on a job. We will consider your ability to interact with peers in school, school-related activities, and other age-appropriate environments as evidence of your ability to relate to co-workers in a job. We will consider your ability to regulate your mood and behavior in various school settings as evidence of your ability to deal with change in a work setting. We will consider your ability to engage in physical activities both in and out of school as evidence of your ability to perform the physical demands of work. We will also consider whether you have acquired any skills from specific vocational education and whether you have pursued any part-time or stay-in-school employment.

(3) If you are working or have worked, we will evaluate such things as: The physical activities in which you are engaged on the job; the regularity and punctuality of your attendance; your ability to follow directions and deal with supervisors; and your ability to work independently and to deal with others in your job.

11. Section 416.924e is revised to read as follows:

§ 416.924e Guidelines for determining disability using the individualized functional assessment.

(a) *General.* The guidelines in this section are provided as a framework for deciding whether a child who has a severe impairment(s) that does not meet or equal the listings nevertheless has an impairment(s) that is of comparable severity to one that would disable an adult, and is, therefore, disabled. The guidelines illustrate a level of impairment severity that is generally, though not invariably, sufficient to establish comparable severity; i.e., to establish that there is an impairment or combination of impairments that substantially reduces your ability to function independently, appropriately, and effectively in an age-appropriate manner. The examples in this section are only guidelines to illustrate severity and are not all-inclusive rules. The determination of your claim is based on all relevant evidence in the case record, using the principles and guidance in §§ 416.924 through 416.924d on a case-by-case basis.

(b) *How we describe functional limitations.* The terms used in this section to describe functional severity of both physical and mental impairments employ as a frame of reference the terminology and definitions in the childhood mental listings in 112.00 of the Listing of Impairments in appendix 1 to subpart P of part 404 of this

chapter. Hence, the examples of "moderate" and other limitations are derived from a comparison with the "marked" levels of functional limitation in the listings. As in those listings, "marked" and "moderate" are not the number of activities or functions which are restricted, but the overall degree of restriction or combination of restrictions in a domain or behavior. A marked or moderate limitation may arise when several activities or functions in a domain or behavior are impaired, or even when only one is impaired.

(1) If you are a younger child, from birth to the attainment of age 3, your functional limitations will generally be described in the examples in terms of a developmental delay, or the fraction or percentage of your chronological age that represents the levels of your functioning; e.g., three-fourths of chronological age. If you are functioning in one of the domains or behaviors described for your age in § 416.924d at more than one-half, but not more than two-thirds, of your chronological age, you are said to have a marked impairment in that domain or behavior. If you are functioning in one of the domains or behaviors described for your age in § 416.924d at more than two-thirds, but not more than three-fourths of your chronological age, we describe your impairment in that domain or behavior as moderate.

(2) If you are an older child or young adolescent, from age 3 to the attainment of age 16, your impairment(s) will generally be described in the examples in terms of specific kinds of age-appropriate activities, functional abilities, or abnormal behaviors. Although it is sometimes appropriate to evaluate severity in this age group in the same terms as are used in paragraph (b)(1) of this section, which describes moderate limitation of functioning in terms of a level that is more than two-thirds but not more than three-fourths of a child's chronological age, the older a child becomes, the less precise are the means of determining this kind of profile. The spectrum of limitations that may constitute "moderate" impairment in this age group ranges from limitations that may be close to the "marked" level in severity to limitations that may be close to the "mild" level and, thus, considerably less limiting. Use of the examples as guides in the evaluation of older children and young adolescents, therefore, requires careful evaluation and judgment in each individual case, taking into account the child's age (as explained in § 416.924a) and all other relevant factors described in §§ 416.924 through 416.924d.

(3) If you are an older adolescent, aged 16 to the attainment of age 18, functional limitations are generally evaluated in terms of physical and mental activities that are the same as, or similar to, activities of young adults. Hence, the guidance and examples in paragraph (d) of this section focus on physical abilities (exertional and nonexertional) and mental abilities associated with work activities, as described in §§ 416.921, 416.945, 416.967, 416.968, and 416.969a. However, assessment of an older adolescent's abilities and limitations is to be made in an age-appropriate context, as demonstrated by performance in school, work, and other relevant settings.

(c) *How we evaluate children from birth to attainment of age 16—(1) Young children (birth to attainment of age 3).* If you are a newborn or young infant (birth to the attainment of age 1), we evaluate the severity of your impairment(s) with respect to four developmental domains (cognitive, communicative, motor, and social development) and your responsiveness to stimuli. If you are an older infant or toddler (age 1 to the attainment of age 3), we evaluate the severity of your impairment(s) with respect to five developmental domains (cognitive, communicative, motor, social, and personal/behavioral development). (See § 416.924d(e) and (f) for descriptions of the domains and behaviors appropriate to each age group.) Our evaluation of severity is based on comparison with the descriptors of functional severity in Listings 112.02–112.12 for childhood mental disorders: If you achieve development of only one-half or less of your chronological age in a single domain, or of only two-thirds or less of your chronological age in two domains, your limitations are at listing-level severity. Examples of when we will generally find comparable severity (as defined in paragraph (a) of this section) and, thus, find you disabled include the following situations described in paragraphs (c)(1) (i) through (ii) of this section. However, the guidance provided by these examples for evaluating young children is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all the regulations addressing childhood disability.

(i) You are functioning in one domain (e.g., motor development) at a level that is more than one-half, but not more than two-thirds of the normal age-appropriate level for a child your age and you are functioning in another domain (e.g.,

communicative) at a level that is more than two-thirds but not more than three-fourths of the normal age-appropriate level for a child your age; or

(ii) You are functioning in three domains (e.g., cognitive, motor, and social development) at a level that is more than two-thirds, but not more than three-fourths of the normal age-appropriate level for a child your age.

(2) *Older children and young adolescents, age 3 to attainment of age 16.* If you are in this age group, we evaluate the severity of your impairment(s) with respect to five functional domains (cognitive, communicative, motor, social, and personal/behavioral function), and your concentration, persistence, and pace in the completion of age-appropriate tasks. (See § 416.924d(g) through (i) for descriptions of the domains and behaviors appropriate to this age group.) The level of severity illustrating the term "moderate," and the overall level of disability at less than the listing level, are based on comparison with the listing-level requirement for marked impairment in two domains, as described in 112.00C of the Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter. In the case of preschoolers (age 3 to the attainment of age 6), it may be appropriate to evaluate the level of severity in terms of developmental age, as in younger children. Examples of when we will generally find comparable severity (as defined in paragraph (a) of this section) and, thus, find you disabled include the following situations described in paragraphs (c)(2) (i) through (ii) of this section. However, the guidance provided by these examples for evaluating older children and young adolescents is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all the regulations addressing childhood disability.

(i) You are functioning at the marked level in one domain or behavior (e.g., in the domain of social functioning, you are generally unable to maintain age-appropriate relationships with peers and adults, with frequent serious conflicts with your family, classmates, and teachers; or in the domain of motor functioning, your range of motion in your elbows, wrists, and fingers is limited by less than 50 percent and you have difficulty writing, typing, picking up and handling small objects, carrying, reaching, and engaging in physical activities which rely heavily on the use of the upper extremities), and you are functioning at the moderate level in another domain or behavior (e.g., in the

domain of personal/behavioral functioning, you are frequently unable to perform self-care activities independently); or

(ii) You are functioning at the moderate level in three areas (e.g., in the domain of cognitive functioning, you have a valid full scale IQ of 74; in the domain of social functioning you have limited age-appropriate relationships with peers and adults, with occasional serious conflicts with family, classmates, teachers, and others; and with respect to the behavior of concentration, persistence and pace, you are frequently unable to complete age-appropriate complex tasks, and occasionally unable to perform simple age-appropriate tasks adequately).

(d) *How we evaluate older adolescents, from age 16 to attainment of age 18—(1) General.* As we explain in § 416.924d(j), children aged 16 to 18 are closely approaching adulthood and can be evaluated in terms that are the same as, or similar to, those used for the evaluation of the youngest adults. Children in this age range who do not have impairment-related limitations are ordinarily expected to be able to do the kinds of physical and mental activities expected of individuals who are at least 18 years old.

(i) The discussions in this section are predicated on the foregoing principles. They describe limitations of physical and mental functions that are associated with, or related to, functions in the workplace, as demonstrated by a child's performance of age-appropriate activities in age-appropriate context, such as school, part-time or full-time work, vocational programs, and organized activities. (See also § 416.924d(j).)

(ii) As in the examples for younger children, the guidance for evaluating older adolescents is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all of the regulations addressing childhood disability.

(2) *Mental functions.* Based on the profile of your activities and functioning in the relevant domains and behavior of cognition, communication, social functioning, personal/behavioral functioning, and your concentration, persistence, and pace in age-appropriate activities, we will consider your mental capacities to perform on a sustained basis (i.e., 8 hours a day, 5 days a week) the general kinds of mental activities that we evaluate for adults. We will consider such things as your ability to understand, carry out, and remember simple instructions; to maintain attention for extended periods of time;

to use judgment; to make simple decisions; to take necessary safety precautions; to respond appropriately to supervision and peers (e.g., by being able to accept instructions and criticism, by not requiring special supervision, and by not being unduly distracted by your peers or unduly distracting to them in a school or work setting); and dealing with changes in your routine school or work setting. (See also, § 416.924d(j).)

(3) *Physical functions.* Based on the profile of your activities in the relevant domain of motor functioning, and your concentration, persistence, and pace in age-appropriate activities, we will consider your physical capacity to perform on a sustained basis (i.e., 8 hours a day, 5 days a week) the types and ranges of exertional and nonexertional activities that we evaluate for adults; e.g., sitting, standing, walking, lifting, carrying, pushing, pulling, reaching, handling, manipulating, seeing, hearing, and speaking. (See also, § 416.924d(j).)

(4) *Evaluation.* If an individualized functional assessment shows that you experience a substantial loss or deficit of capacity to perform the age-appropriate mental or physical activities described, we will find that your impairment(s) seriously interferes with your ability to function independently, appropriately, and effectively in an age-appropriate manner, and that it has substantially reduced your ability to acquire the skills needed to assume roles reasonably expected of adults. Therefore, we will conclude that you have an impairment(s) that is comparable in severity to an impairment that would disable an adult, and that you are disabled.

(i) The term "substantial loss or deficit" is not a precise number, percentage, or quantitative measure.

(ii) *Substantial loss or deficit* means that you are unable to meet the basic physical demands of at least sedentary work (as defined in § 416.967(a)); or you are unable to meet the basic mental demands of at least unskilled work (as defined in § 416.968(a)); or that you have an impairment(s) that would severely limit the potential occupational base of a person age 18 through 45 and that would justify a finding of inability to perform other work even for a person with favorable age, education, and work experience (see §§ 416.969, 416.969a, and Appendix 2 to subpart P of part 404 of this chapter).

12. Section 416.926a is amended by revising paragraphs (b)(3), (c), and (d) to read as follows:

§ 416.926a Equivalence for children.

* * * * *

(b) *How we determine the equivalence of impairments for children.* * * *

(3) If we cannot find equivalence under either of the foregoing provisions, we will assess the overall functional limitations that result from your impairment(s), i.e., what you cannot do because of your impairment(s). If you have more than one impairment, we will consider the combined effects of all your impairments on your overall functioning. We will compare the functional limitations(s) resulting from your impairment(s) with the functional consequences of any listed impairment which includes the same functional limitations; the listing we choose for comparison need not be medically related to your impairment(s). If the functional limitation(s) resulting from your impairment(s) is the same as the disabling functional consequences of a listed impairment, we will find that your impairment(s) is equivalent to that listed impairment. When we make a determination or decision using this rule, the primary focus will be on the disabling consequences of your impairment(s), as long as there is a direct, medically determinable cause for these consequences.

(c) *Responsibility for determining equivalence.* In cases where the State agency or other designee of the Secretary makes the initial or reconsideration disability determination, a State agency staff medical or psychological consultant or other designee of the Secretary (see § 416.1016) has the overall responsibility for determining equivalence. For cases in the disability hearing process, the responsibility for determining equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Associate Commissioner for Disability or his or her delegate. For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding equivalence rests with the Administrative Law Judge or Appeals Council.

(d) *Examples of impairments of children that are functionally equivalent to the listings.* The following are some examples of consequences of impairments that are functionally equivalent to listed impairments. The consequences of each child's impairment(s) must be assessed to determine whether they are functionally equivalent to those of a listed impairment. Findings of equivalence based on the disabling functional consequences of a child's impairment(s) should not be limited to the examples

below, because these examples do not describe all the possible effects of impairments that might be found to be equivalent to a listed impairment. As with any disabling impairment, the duration requirement must also be met (see §§ 416.909 and 416.924(a)).

(1) Documented need for major organ transplant (e.g., heart, liver).

(2) Any condition that is disabling at the time of onset, requiring a series of staged surgical procedures within 12 months after onset as a life-saving measure or for salvage or restoration of function, and such major function is not restored or is not expected to be restored within 12 months after onset of the condition.

(3) Frequent need for a life-sustaining device (e.g., mechanical ventilation), at home or elsewhere.

(4) Marked inability to stand and walk; e.g., ambulation possible only with obligatory bilateral upper limb assistance.

(5) Any physical impairment(s) or combination of physical and mental impairments causing marked restriction of age-appropriate activities of daily living and marked difficulties in maintaining age-appropriate social functioning.

(6) Any physical impairment(s) or combination of physical and mental impairments causing complete inability to function independently outside the area of one's home within age-appropriate norms.

(7) Requirement for 24-hour-a-day supervision for medical or behavioral reasons.

(8) Infants weighing less than 1200 grams at birth, until attainment of 1 year of age.

(9) Infants weighing at least 1200 but less than 2000 grams at birth, and who are small for gestational age, until attainment of 1 year of age. (*Small for gestational age* means a birth weight that is at or more than 2 standard deviations below the mean or that is below the 3rd growth percentile.)

(10) In an infant who has not attained age 1 year, any physical impairment(s) or combination of physical and mental impairments that satisfies the requirements of Listing 112.12.

(11) Major congenital organ dysfunction (e.g., congenital heart disease) which could be expected to result in death within the first year of life without surgical correction, and the impairment is expected to be disabling (because of residual impairment following surgery, or the recovery time required, or both) until attainment of 1 year of age.

(12) Tracheostomy or gastrostomy in a child who has not attained age 3.

13. Section 416.928 is amended by revising paragraph (a) to read as follows:

§ 416.928 Symptoms, signs, and laboratory findings.

(a) *Symptoms* are your own description of your physical or mental impairment. If you are a child under age 18 and are unable to adequately describe your symptom(s), we will accept as a statement of this symptom(s) the description given by the person who is most familiar with you, such as a parent, other relative, or guardian. Your statements (or those of another person) alone, however, are not enough to establish that there is a physical or mental impairment.

14. Section 416.994a is amended by revising the first sentence and the parenthetical cross-reference of paragraph (b)(5), paragraph (d)(2), the third sentence and the parenthetical cross-reference in paragraph (f)(1), and the second sentence and parenthetical cross-reference of paragraph (f)(2) to read as follows:

§ 416.994a How we will decide whether your disability continues or ends, disabled children.

(5) *Are you currently disabled?* In connection with our determination that there has been medical improvement in your impairment(s) related to the ability to work, or if one of the first group of exceptions applies, and you have a severe impairment or combination of impairments, we will do an individualized functional assessment of the impact of your impairment(s) on your overall ability to function independently, appropriately, and effectively in an age-appropriate manner. (See §§ 416.924d and 416.924e.)

(2) *Previous decision based on an individualized functional assessment.* If our most recent favorable decision was based on an individualized functional assessment, we will do a new individualized functional assessment based on the previously existing impairments. However, the new individualized functional assessment will take into consideration any current medical findings or functional limitations related to the previously existing impairments, and will be based on those functions that are appropriate to your current age.

(f) * * *

(1) * * * This decision will be based on new medical evidence and a new individualized functional assessment. (See §§ 416.924d and 416.924e.) * * *

(2) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work). * * * This decision will be based on substantial evidence which includes new medical evidence and a new individualized functional assessment. (See §§ 416.924d and 416.924e.) * * *

* * * * *
For the reasons set out in the preamble, part 416, Subpart J, chapter III

of title 20, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Subpart J continues to read as follows:

Subpart J—Determinations of Disability

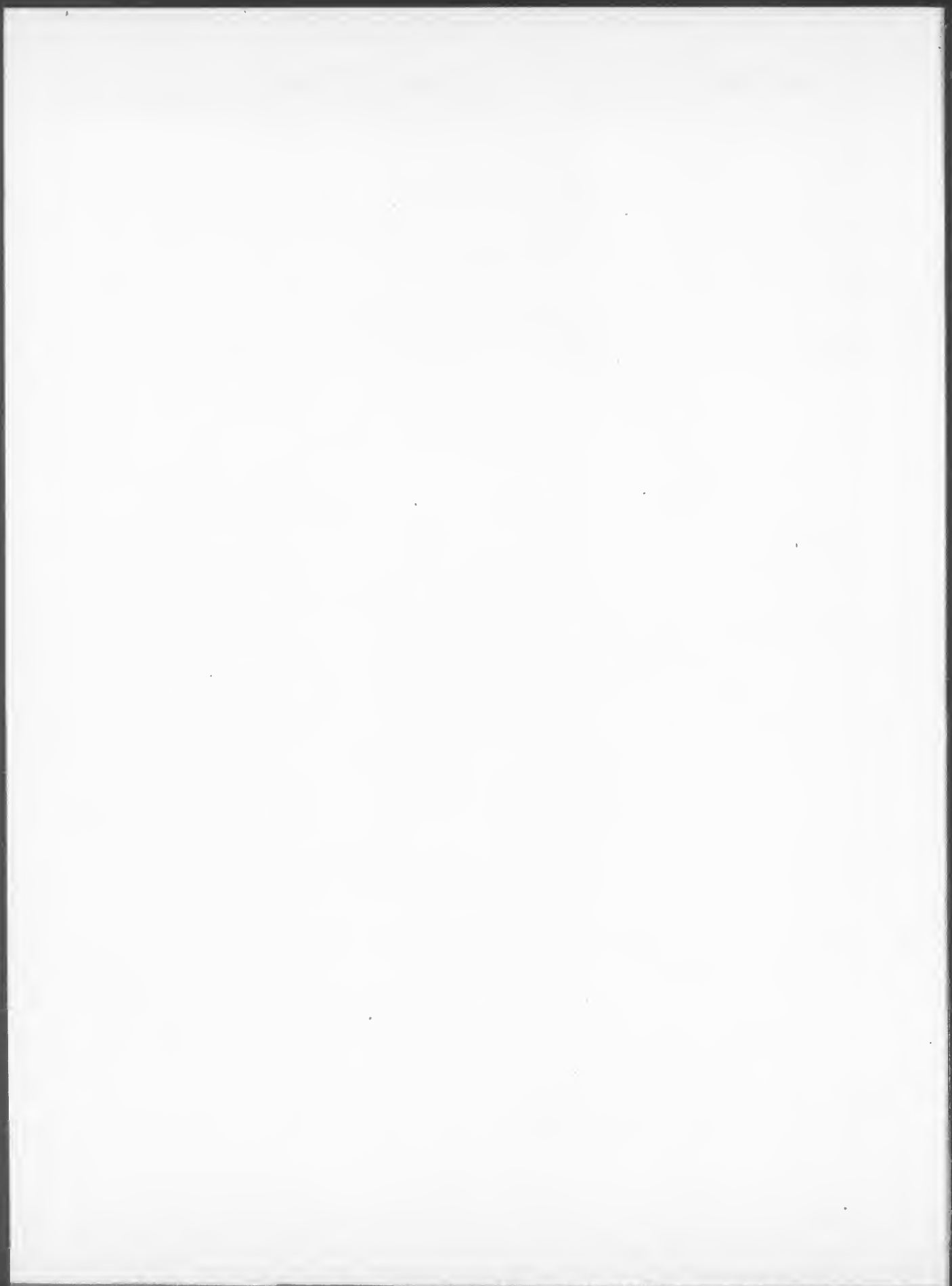
Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c, 1383, and 1383b.

2. Section 416.1015 is amended by redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h), and by adding a new paragraph (e) to read as follows:

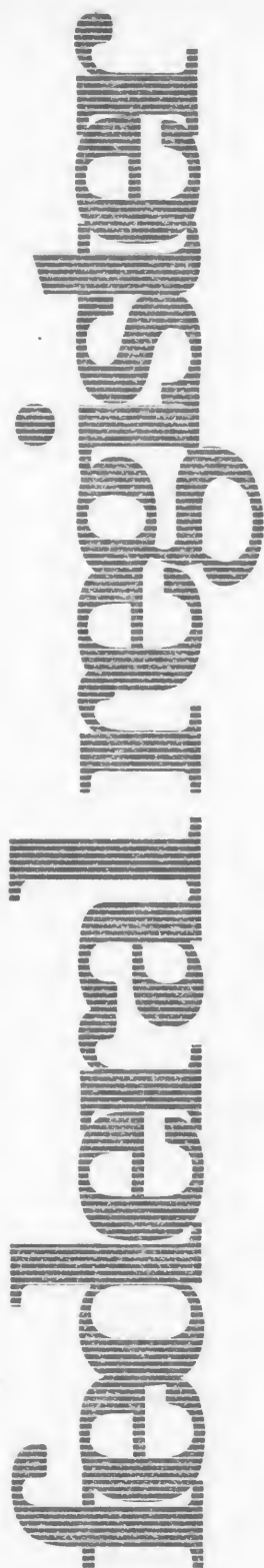
§ 416.1015 Making disability determinations.

* * * * *
(e) In making a determination under title XVI with respect to the disability of a child to whom paragraph (d) of this section does not apply, we will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the case of the child.
* * * * *

[FR Doc. 93-21600 Filed 9-8-93; 8:45 am]
BILLING CODE 4190-29-P



Thursday
September 9, 1993



Part III

**Department of
Health and Human
Services**

Administration for Children and Families

**Administration for Native Americans:
Availability of Financial Assistance;
Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612-941]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, (ACF), HHS.
ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, Alaskan Natives and Native American Pacific Islanders for social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1994 funds for social and economic development projects. Financial assistance provided by ANA is designed to promote the goal of self-sufficiency for Native American tribes and organizations through support of locally determined social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are October 22, 1993, February 11, 1994, and May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 690-6034 or Hank Aguirre, (202) 690-6439, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 349F, Washington, DC 20201-0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1994 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders through projects that advance locally developed social and economic development (SEDS) strategies. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93-644, 88 Stat. 2324, 42 U.S.C. 2991b for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. Progress toward the goal of self-sufficiency requires active development with regard to the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and economic well-being of individuals, families and communities. Progress toward self-sufficiency is based on the community's ability to develop a social and economic development strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals. A Native American community is self-sufficient when it can generate and control the resources which are necessary to meet the needs of its members and to meet its own social and economic goals.

The Administration for Native Americans bases its program and policy on three interrelated goals:

(1) **Governance:** To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) **Economic Development:** To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

(3) **Social Development:** To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

To achieve these Federal agency goals, ANA supports tribal and village governments, and other Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The ANA SEDS approach supports ANA's Federal agency goals and is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes local self-determination necessary. The local community is in

the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic, governance, and social development are interrelated. Development in one area should be balanced with development in the others to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to develop self-sufficient communities.

The principles of the SEDS approach discussed above assume these definitions of important terms linked to the SEDS process:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.

- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.

- "Social infrastructure" includes those components through which health and economic well-being are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local SEDS strategy is developed as part of the application for project funding. Without a careful balance between governmental, economic and social development infrastructures, a community's development efforts could be jeopardized.

For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development. Additionally, the governmental infrastructures must be put in place to support or institute social and economic development and growth.

B. Proposed Projects To Be Funded

1. General Considerations

The Administration for Native Americans assists eligible applicants (see section C below) to undertake one- to three-year development projects that are a part of long-range comprehensive plans to move toward social and economic self-sufficiency. Applicants

must also propose a concrete, locally determined strategy to carrying out a proposed project and fundable activities. Local long-range planning must consider the maximum use of all available resources, how these resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder social and economic growth in the community. The Administration for Native Americans encourages applicants to design project strategies to achieve their specific but interrelated governance, and social and economic objectives and to use available human, natural, financial, and physical resources to which the applicant has access.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but supported by funds other than ANA's.

2. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund programs which operate indefinitely or require ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is defined as funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are therefore

grant eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

3. SEDS Goals and Potential Activity Focus

This sub-section discusses SEDS goals and the range of possible activities that are thought to be consistent with each of the three SEDS goals below. Applicants should define their own activities, keeping in mind the range of options that encompass each goal.

Social and Economic Development Strategies (SEDS)

Building on developing the foundation for strong local governance, ANA supports tribal and village governments' and other Native American organizations' corollary plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies and their objectives should describe in detail how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, SEDS strategies that combine balanced social and economic and governance goals should address how to obtain independent sources of revenue for the community or how the venture supports the long-term goals.

Goal 1: Governance Development. Effective governance is a necessary foundation and condition for the social and economic development of Indian tribes, Alaska Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the governmental, judicial and/or administrative infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States. Under its governance development goal, ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their

established administrative and management procedures that influence their institutional management systems. The purpose of this capacity is to develop and implement effective social and economic development strategies and their comprehensive community long term goals and to improve their day-to-day governmental management. By improving governance and management capabilities, Indian Tribes, Alaska Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Applications in this area are generally under the following categories: -

- Clarification of tribal status;
- Federal or State tribal recognition;
- Amendments to tribal constitutions; court procedures and functions; by-laws or codes; and council or executive branch duties and functions; and,
- Improvements in administration and management of tribes/villages.

Goal 2: Economic Development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and economic well-being of individuals and families, and preserve the values, language, and culture of the community.

C. Eligible Applicants

1. Who Is Generally Eligible To Apply?

Current ANA grantees whose project period terminates in fiscal year 1994 (October 1, 1993-September 30, 1994) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA grantees, the following organizations are eligible to apply:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

2. Who Is Not Generally Eligible

Colleges and universities are not eligible applicants unless they serve Native Hawaiians or the other Native American Pacific Islanders. Native American Pacific Islanders are defined as American Samoan Natives and indigenous peoples of Guam, the Northern Marianas, and Palau.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

3. Special Circumstances for Alaska Native Organizations

A separate program announcement for fiscal year 1994 funding will also be published specifically for Alaska Native applicants (Program Announcement 93612-942). In Fiscal Year 1994, Alaska Native entities are eligible to submit an application under the special announcement for Alaska Native Organizations (93612-942) or this announcement (93612-941). However, when applying under either announcement, Alaskan Native entities

are limited to a single application for each closing date.

An Alaska Native applicant may apply for the:

- (1) October 22, 1993 closing date of Program Announcement 93612-941; and
- (2) February 11, 1994 closing date for Program Announcement 93612-941 OR for Program Announcement 93612-942; and
- (3) May 20, 1994 closing date for Program Announcement 93612-941 OR for Program Announcement 93612-942.

D. Available Funds

Approximately \$14 million of financial assistance is anticipated to be available under this program announcement for American Indian, Alaska Native, Native Hawaiian, and Native American Pacific Islander projects. This program announcement is being issued in anticipation of the appropriation of funds for FY 1994, and is contingent upon sufficient final appropriations.

Each tribe, Native American organization, or other eligible applicant can receive only one grant award under this announcement. The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project *cannot* be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved Objective Work Plan (OWP), the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements, including timely objective progress reports (OPRs).

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$300,000 in Federal funds (based on an award of \$100,000 per budget period for three years), must include a match of at least \$25,000 (20% total project cost per budget year). An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95-134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under \$200,000 (including in-kind contributions).

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: Earldine Glover. Phone: (202) 690-5781.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Room 341F, Hubert H. Humphrey Building, 200 Independence

Avenue, SW., Washington, DC 20201-0001, Attention: ANA 93612-941.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

3. Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section I below). An independent review panel consisting of reviewers familiar with Native American Tribes, communities and organizations evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's funding decision also takes into account the analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the

amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

2. Applicants Rejected for Organizational or Activities Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) (42 U.S.C. 2991h) of the Native American Programs Act Amendments provides for an appeals process when ANA determines that an organization or activities are ineligible for assistance. Section 810(b) (42 U.S.C. 2991h) provides that:

"* * * (b) If an application is rejected on the grounds that the applicant is ineligible or that activities proposed by the applicant are ineligible for funding, the applicant may appeal to the Secretary, not later than 30 days after the date of receipt of notification of such rejection, for a review of the grounds for such rejection. On appeal, if the Secretary finds that an applicant is eligible or that its proposed activities are eligible, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration * * *"

When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

3. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed

project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purposes of this announcement), include a social and economic development strategy, and address the specific developmental steps toward self-sufficiency that the specific tribe or Native American community is undertaking.

The five programmatic and management criteria are closely related to each other. They are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application explains how specific social, governance and economic long-range community goals related to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development (SEDS) strategy.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of \$200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from

other specific sources is not considered a binding commitment of outside resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under \$200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all of ANA applicants.

(2) Organizational Capabilities and Qualifications. (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumés of key personnel, including those of consultants, are presented. The position descriptions and resumés relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly related to the personnel staffing required to achieve of the project objectives. Resumés indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumés set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project objective work plans with activities related to the SEDS strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for each budget period proposed and demonstrate(s) that each of the objectives and its activities:

- Are measurable and/or quantifiable in terms of results or outcomes;
- Are based on the fully described and locally determined balanced SEDS strategy narrative for governance or social and economic development;
- Clearly relate to the community's long-range goals which the project addresses;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective, will be accomplished;

- Specify who will conduct the activities under each to achieve the objective; and,

- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

There is a detailed budget provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement). Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants in developing a competitive application.

(1) Program Guidance

- The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development leading to its self-sufficiency. The Administration for Native Americans does not fund on the basis of need alone.

- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. The appropriateness and potential of the proposed project in strengthening and promoting the goal of the self-

sufficiency of a community will be determined by reviewers.

- An application should describe a clear relationship between the proposed project, the SEDS strategy, and the community's long-range goals or plan.

- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact on the community that the project will have.

- Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the plan for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these as a guide to its development of an economic development project or business that is part of the application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.

- A "multi-purpose community-based native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational

activities, and the delivery of human service such as health, day care, counseling, education, and training.

(2) *Technical Guidance*

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

- There is no maximum or minimum amount of Federal funds that may be requested.

- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

- The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

- An application from a Federally recognized tribe or an organization serving members of a Federally recognized tribe must be from the governing body of the tribe.

- An application from a Native American organization must be from the governing body of the applicant.

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

- The Administration for Native Americans requires that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

- Two copies of the application plus the original are required.

- The Cover Page (included in the Kit) should be the first page of an

application, followed by the one-page abstract.

- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

- Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92.)

- Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

(3) *Projects or Activities That Generally Will Not Meet the Purposes of This Announcement*

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS

strategy long-range development plan. The Administration for Native Americans is not interested in funding "wish lists" of business possibilities.

The Administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies on the potential success to the business prior to the submission of the application.

- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

- Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

- Project goals which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development).

- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. In situations where both consortia of tribes and individual consortia tribal members receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates what their members are doing.

- Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

- The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see ACF Grants Administration Manual Ch. 3, § E).

- Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the

budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 22, 1993, February 11, 1994, and May 20, 1994.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in Section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in the above paragraph of this

section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: June 21, 1993.

Dominic Mastrapasqua,

(Acting) Commissioner, Administration for Native Americans.

[FR Doc. 93-21925 Filed 9-8-93; 8:45 am]

BILLING CODE 4184-01-M

30 CFR Part 800

Thursday
September 9, 1993

Part IV

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Part 800

Bond and Insurance Requirements for
Surface Coal Mining and Reclamation
Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

RIN 1029-AB61

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its regulations by revising the provisions and requirements for an Alternative Bonding System. OSM proposes to amend its bonding regulations to assure adequate funds for reclamation in the event of the termination of an alternative system, and to ensure the United States has the ability to effect all necessary and expedient transfers of authority should OSM become a successor Regulatory Authority (RA) where such a system exists. The proposed rule is the result of a report recommendation made by an OSM Ad Hoc Bonding Committee.

The proposed rule is warranted because a major finding of an OSM Ad Hoc Bonding Committee report was that the alternative systems, as presently constituted, pose sufficient risk to reclamation in the event of ABS failure. **DATES:** *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 8, 1993.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee on November 1, 1993. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 15, 1993. Individuals wishing to attend but not testify at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, rm. 660 N.C.,

800 North Capitol Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 N.C., 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Richard Lord, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone (202) 343-3375.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures*Written Comments*

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **DATES**) may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **DATES** and **ADDRESSES**). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Lord (see **FOR**

FURTHER INFORMATION CONTACT) either orally or in writing of the desired hearing location by 5 p.m. Eastern time October 15, 1993. If no one has contacted Mr. Lord to express an interest in participating in a hearing in a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and assure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of their testimony.

II. Background

Authority for the rule is found in title V, section 509(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1259. Section 509(c) of SMCRA provides for the approval of an Alternative Bonding System (ABS) that achieves the objectives and purposes of the Act. Implementing regulations 30 CFR 800.11(e) require that an ABS assures that the RA has available sufficient money to complete the reclamation plan for any areas which may be in default at any time, and provide a substantial economic incentive for the permittee to perform the reclamation. However, OSM believes that current regulatory language concerning an ABS is inadequate to safeguard reclamation in the event an ABS fails, but that ABS viability may be assured with explicit regulatory statement regarding ABS termination.

III. Discussion of Proposed Rule

According to an OSM Ad Hoc Bonding Committee finding, there is a significant financial and reclamation risk associated with the existing ABSs. OSM's concern is for the continued solvency of an ABS should an RA choose to adopt a new bonding system and/or terminate an existing ABS, of if a state's program is substituted by a Federal program.

Existing regulations do not provide sufficient reclamation fund safeguards with respect to ABS termination or State program substitution. Therefore, DOI proposes to amend 30 CFR 800.11 Requirement to file a bond, by adding paragraph (f) which would add provisions and stipulations for an ABS.

Section 800.11(f)(1) would assure that in the event an ABS terminates, it would remain viable and liable for the generation of income needed to satisfy existing forfeitures and future liability of the sites covered by the ABS, or until another approved bonding mechanism is put in place to substitute the coverage by the ABS. Section 800.11(f)(2) would assure that in the event of a 30 CFR part 733 action, the ABS fund and all supporting legal documents, such as indemnity agreements, would be transferable to the United States, OSM, that would become the successor RA under a Federal program.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal Programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 respectively. The proposed rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR part 750.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget as approved under 44 U.S.C. 3501 *et seq.*

Executive Order 12612 on Federalism

Executive Order 12612 requires that Federal departments and agencies evaluate regulatory proposals to determine whether they would have a substantial impact on Federalism. The Executive Order sets forth fundamental Federalism principles, criteria for Federalism policymaking, and requirements for Federalism

assessments. The proposed rule has been reviewed according to the Executive Order on Federalism and it was determined that the proposed rule has Federalism implications. A Federalism Assessment was prepared and is on file in the administrative record for the rulemaking. The Federalism Assessment concluded that the rule would shift some policymaking decisions from the States to the Federal government by establishing standards for the approval of alternative bonding systems. However, the authority to do so is already implicit in SMCRA. Therefore, the Federalism implications are not considered to be substantial.

Executive Order 12778 on Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule, if adopted, will have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's rules. Any State law that is inconsistent with or that would preclude implementation of this rule would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the rule would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel v. Virginia Surface Mining and Reclamation Ass'n.*, 452 U.S. 264 (1981).

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

This rule would modify the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does not rule provide a clear and certain legal standard for affected conduct rather than a general standard,

while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONS) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see ADDRESSES). An EA will be completed on the final

rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Richard Lord, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343-3375.

List of Subjects in 30 CFR Part 800

Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

Accordingly, it is proposed to amend 30 CFR part 800 as set forth below:

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for part 800 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

2. Section 800.11 is amended by adding paragraph (f) to read as follows:

§ 800.11 Requirement to file a bond.

* * * * *

(f) An OSM approved State or Federal alternative bonding system must also provide the following assurance:

(1) The alternative, if terminated, will continue to generate income in the amount sufficient to cover the period of liability for any area in accordance with § 800.13 until the reclamation plan for

any area in default is completed, or until performance bond liability is transferred to another approved performance bond; and

(2) No alternative may be approved under the provisions of this section unless the alternative provides that in the event the State program is substituted by direct Federal enforcement, or in the event the approval of the State program is withdrawn in accordance with 30 CFR part 733, the reclamation funds and the supporting performance bond documents of the alternative shall transfer to and become payable only to the United States.

* * * * *

[FR Doc. 93-21920 Filed 9-8-93; 8:45 am]

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Federal Register

Thursday
September 9, 1993

Part V

**Department of
Health and Human
Services**

Food and Drug Administration

**21 CFR Part 310
Ingrown Toenail Relief Drug Products;
Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0348]

RIN 0905-AA06

Ingrown Toenail Relief Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any ingrown toenail relief drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC ingrown toenail relief drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 17, 1980 (45 FR 69128), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC ingrown toenail relief drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 15, 1981. Reply comments in response to comments filed in the initial comment period could be submitted by February 16, 1981.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC ingrown toenail relief drug products was published in the Federal Register of September 3, 1982 (47 FR 39120). Interested persons were invited to file by November 2, 1982, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 2, 1983. New data could have been submitted until September 3, 1983, and comments on the new data until November 3, 1983.

In the Federal Register of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included, in § 310.545(a)(11), chloroxyleneol and urea, active ingredients under consideration in the rulemaking for OTC ingrown toenail relief drug products. These ingredients were determined to be nonmonograph because no additional data had been submitted establishing that they were generally recognized as safe and effective for ingrown toenail relief. Final agency action on all other OTC ingrown toenail relief drug products occurs with the publication of this final rule.

In the proposed rule, the agency did not propose any OTC ingrown toenail relief active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the event that data were submitted that resulted in the upgrading of any ingredient to monograph status in the final rule. In this final rule, however, no ingredient has been determined to be generally recognized as safe and effective for use in OTC ingrown toenail relief drug products. Therefore, proposed subpart D of 21 CFR part 358 for OTC ingrown toenail relief drug products is not being issued as a final regulation.

This final rule declares OTC drug products containing active ingredients for ingrown toenail relief to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of

an approved application, products containing these drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing ingrown toenail relief ingredients by adding new § 310.538 (21 CFR 310.538) to subpart E. The inclusion of OTC ingrown toenail relief drug products in part 310 follows FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC ingrown toenail relief drug product, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed regulation for OTC ingrown toenail relief drug products (47 FR 39120), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the Federal Register for relabeling and reformulation of ingrown toenail relief drug products to be in compliance with the monograph. Although data and information were submitted on tannic acid and sodium sulfide 1 percent in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, ingrown toenail relief drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking

(45 FR 69128), the agency advised that conditions excluded from the monograph (Category II) would be effective 6 months after the date of publication of a final monograph in the Federal Register. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions for these drug products. Therefore, on or after March 9, 1994, no OTC drug products that are subject to this final monograph may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC ingrown toenail relief drug products, two drug manufacturers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. Comments on Ingredients

1. One comment requested Category I status for tannic acid contending that it has the capability to harden the nail groove by hardening the skin around the nail, which the Panel considered the prime treatment consideration in relief of ingrown toenail (45 FR 69128 at 69131). The comment reviewed the Panel's assessment of tannic acid and disagreed with the agency's assessment of data discussed in the tentative final monograph (comment 5, 47 FR 39120 at 39122).

The comment submitted clinical data (Refs. 1 and 2) to support the epidermal hardening action of tannic acid. One study (Ref. 1) was a double-blind, randomized, parallel, multi-centered, outpatient study of 53 subjects who applied 25 percent tannic acid in isopropyl alcohol (83 percent by volume) or isopropyl alcohol (83 percent by volume) alone to their ingrown toenails 3 or 4 times a day. Symptoms were evaluated during the initial visit, after 7 days, and at the completion of the 14-day study. The study evaluated epidermal hardening, tenderness, infection, skin temperature, inflammation, edema, nail-flap hypertrophy, and cellulitis. At the completion of the study, global evaluations were made by both the investigator and the subjects using a scale of 1 to 6 with a score of 1 equal

to complete clinical control of the condition, a score of 5 equal to exacerbation of the condition, and a score of 6 representing no evaluation. In addition, each subject was provided with a self-rating daily diary and instructed to record the relief of pain, swelling, and redness, using a four-point scale: none, mild, moderate, and severe.

The comment submitted the results of a second double-blind, randomized, parallel study of 42 subjects using a modified in vivo technique (Ref. 2) to substantiate the epidermal hardening effect of tannic acid. The technique utilized blunt (nonabrasive) probes connected to a desktop computer terminal to objectively determine skin softness and smoothness. Subjects applied either 25 percent tannic acid in 83 percent isopropyl alcohol (21 subjects) or 83 percent isopropyl alcohol alone (21 subjects) 3 or 4 times daily for 7 days. Epidermal hardening was measured on the skin proximal to an ingrown toenail and at a control site on each subject on the initial visit and again after 7 days. The comment contended that the study's results demonstrate a statistically significant hardening effect of the tannic acid solution on skin surrounding ingrown toenails with a p-value of .008.

As discussed in the tentative final monograph (47 FR 39120 at 39122), the agency concurs with the Panel that evidence was insufficient to show that tannic acid is effective in relieving the symptoms of ingrown toenail by hardening the skin and shrinking the soft tissue surrounding an ingrown toenail because the studies submitted to the Panel did not test tannic acid alone. The agency has reviewed the new clinical data and determined that they also are inadequate to support the effectiveness of tannic acid for the relief of ingrown toenails. In the first study (Ref. 1), the subjects selected were to have been classified as having "mild to moderate ingrown toenail" or "acute mild to moderate ingrown toenail," yet several subjects in the study had ingrown toenails for long periods of time (ranging up to 3 years), and one subject had had previous surgery and was without a nail. Thus, it was not clear what is meant by "acute, mild to moderate" ingrown toenail and it appears that some of the subjects were not appropriately included in the study. Subject selection was to be based on both inclusion characteristics (age and nail involvement) and exclusion characteristics (pregnancy, preexisting diseases, sensitivities, deformed nails, and infection). These criteria were not followed. Of the 53 subjects in the

study, 14 should not have been included according to the protocol.

Target symptoms and parameters were evaluated on three visits; however, the grading scale was highly subjective with inconsistencies occurring between investigators and between investigators and subjects. Adjunctive therapy, including sandals, open toe shoes, and cut shoes, was used in a least 11 subjects with no evaluation made of the effects of this additional treatment.

The statistical analysis and conclusions addressed only a few of the test parameters. Comparisons of nail-flap hypertrophy, nail-cutting difference, pain difference, and redness difference were not made between the second and third visits and overall. The agency concludes that in a study to demonstrate the "relief of symptoms of ingrown toenail," all data for all symptoms used as test parameters need to be included and considered.

While the study's conclusions were drawn from 47 of the 53 subjects enrolled, data from only 26 subjects can be considered due to both protocol and investigational discrepancies on 27 subjects. Even if only the 26 subjects who meet the protocol were considered, 50 percent or greater relief of symptoms was obtained in 28 percent of the tannic acid group compared to 34 percent of the control group. Therefore, it could be argued that the base was more effective than the tannic acid.

In the second study (Ref. 2), the comment contends that the study shows a 46 percent increase in skin hardness for the tannic acid group and a 6 percent decrease in skin hardness for the alcohol-control group. The agency notes, however, that no other symptoms of ingrown toenail relief were assessed. While the study may provide support for tannic acid as a "skin hardener," it is not acceptable as adequate proof of effectiveness for tannic acid for the relief of other symptoms of ingrown toenail, such as pain, inflammation, and tenderness.

Although the comment contends that tannic acid hardens epidermal tissue and reduces inflammation significantly better than the base alone, the submitted studies do not show significant differences in favor of tannic acid. Based on the deficiencies in both studies, as noted above, the agency concludes that these data are not acceptable as adequate proof of effectiveness that tannic acid relieves symptoms of ingrown toenails.

References

- (1) "A Comparison of the Efficacy of Tannic Acid in Isopropyl Alcohol versus Isopropyl Alcohol Base for Relief of

Discomfort of Ingrown Toenail," Comment No. C00007, Docket No. 80N-0348, Dockets Management Branch.

(2) "Double Blind, Randomized Parallel Study of the Effect of a Tannic Acid Solution on the Hardness of the Skin of People with Onychocryptosis," Comment No. C00009, Docket No. 80N-0348, Dockets Management Branch.

2. One comment submitted data (Ref. 1) to support the use of sodium sulfide 1 percent for the temporary relief of pain associated with ingrown toenails. In addition, the comment stated that the data support an expanded indications statement for products containing sodium sulfide: "Relieves pain by softening imbedded (ingrown) toenails." The data resulted from a well-controlled, double-blind, multicenter clinical study involving a total of 61 subjects in two separate trials. In both trials, the test subjects applied sodium sulfide 1 percent for 7 days, while the control subjects used a placebo consisting of the identical vehicle without the active ingredient. One of the subjects treated two toes, while another subject dropped out after 5 days.

The agency has evaluated the results of the study and determined that they demonstrate that sodium sulfide 1 percent, when compared to placebo, is effective in providing temporary relief of pain due to ingrown toenails. The difference was shown to be statistically significant ($p = \text{less than } .001$). The sodium sulfide treated group showed a decrease in pain beginning on day 2, with continuing decrease in pain throughout the remaining 5 days of the study. The placebo group did not improve significantly throughout the 7-day study period.

The data also show that the nails of the test subjects who used sodium sulfide 1 percent were softened beginning on day 2, with improvement to day 6, but with no significant improvement thereafter. However, the study did not clearly establish that the symptomatic relief reported was due to softening of the imbedded (ingrown) toenail. Subjects receiving the placebo also showed a slight but not significant increase in nail softness by days 4, 6, and 7 compared to day 1.

In reviewing the data, the agency noted that in both trials many of the subjects using the test drug product suffered adverse effects. This raised questions about the safety of using sodium sulfide for the relief of pain associated with ingrown toenails.

In the first trial consisting of 32 subjects, 15 used the sodium sulfide product and 17 used the placebo. One subject using the sodium sulfide drug product dropped out of the study after

day 5 because of erosions that failed to heal within 24 hours. Seven of the subjects using the sodium sulfide product experienced mild to moderate adverse reactions such as tingling, stinging sensation, and/or slight to severe burning sensations. Four of the subjects using the placebo also reported some mild adverse reactions, such as stinging, throbbing, swelling, numbness, and/or rash.

In the second trial, 29 subjects completed the study. Fourteen subjects used the sodium sulfide product, and 15 subjects used the placebo. Five of the subjects using sodium sulfide reported severe adverse reactions, such as burning, "open and sore," "red and open," and slight erythema. Three subjects stopped using the sodium sulfide product temporarily. Three other subjects using the sodium sulfide product experienced mild reactions, such as slight burning or tingling.

In summary, 16 of the 29 subjects using the sodium sulfide product in the two trials experienced some type of adverse reaction. The agency could not clearly ascertain from the clinical data submitted what proportion of the adverse reactions may have been drug induced. However, many of the subjects were advised to use vaseline, stop using the product, and/or use soapy soaks and epsom salts.

The agency concludes that the extremely high incidence of adverse reactions, particularly the burning sensations and irritation, and the need for subsequent professional advice and counseling to counter the effects of these adverse reactions makes this ingredient unacceptable for OTC use. The agency considers sodium sulfide as unsafe for OTC human use for the temporary relief of pain associated with ingrown toenails. Therefore, sodium sulfide 1 percent is not considered a monograph condition.

Reference

(1) "New Clinical Data Supporting Efficacy of Sodium Sulfide, 1 percent in Relieving Pain of Ingrown Toenails," Comment No. C00008, Docket No. 80N-0348, Dockets Management Branch.

3. One manufacturer requested a meeting to discuss protocols for studies to support the safety and effectiveness of an anesthetic in combination with tannic acid (Ref. 1).

The agency requested the manufacturer to provide proposed protocols (Refs. 2 and 3), but none have been submitted to date. The use of several anesthetic ingredients (benzocaine, chlorobutanol, and dibucaine) in ingrown toenail relief drug products was discussed by the

Panel (45 FR 69122 at 69129) and their review was deferred to the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products. That Panel did not review these ingredients for this use. The agency is not aware of any data that establish the safety and effectiveness of anesthetic ingredients for the relief of symptoms (e.g., pain) of ingrown toenail. Therefore, benzocaine, chlorobutanol, and dibucaine are nonmonograph conditions for this use.

References

(1) Comment No. C00010, Docket No. 80N0348, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to C. Farhi, American Home Products Corp., coded ANS/C00010, Docket No. 80N-0348, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to C. Farhi, American Home Products Corp., coded LET2, Docket No. 80N-0348, Dockets Management Branch.

B. Comments on Directions

4. One comment requested revisions in the directions for use for OTC ingrown toenail drug products. The comment noted that it used these suggested directions in a clinical study and they were easy for consumers to understand. A second comment requested that the directions provide the option of applying ingrown toenail relief drug products with an applicator or with cotton in the nail groove.

The agency is not addressing these comments in this final rule because no active ingredients are included in a monograph for OTC ingrown toenail relief drug products. When an active ingredient achieves Category I status for this use, the agency will develop appropriate directions for use and will consider the comments' requests at that time.

II. The Agency's Final Conclusions on OTC Ingrown Toenail Relief Drug Products

At this time, there is a lack of sufficient data to establish that benzocaine, chlorobutanol, dibucaine, sodium sulfide, tannic acid, or any other ingredients are safe and effective for use for ingrown toenail relief. The agency has determined that no active ingredient has been found to be generally recognized as safe and effective and not misbranded for use in an OTC ingrown toenail relief drug product.

In the Federal Register of November 7, 1990 (55 FR 46914), the agency published a final rule in part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug

rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(11) the ingredients chloroxylenol and urea that had been previously considered under this rulemaking for use as active ingredients in ingrown toenail relief drug products. This final rule establishes that any OTC ingrown toenail relief drug product is not generally recognized as safe and effective and expands the nonmonograph ingredients to include all other OTC ingrown toenail relief active ingredients. These additional ingredients include, but are not limited to, benzocaine, chlorobutanol, dibucaine, sodium sulfide, and tannic acid, which were reviewed by the Panel and the agency. Therefore, any ingredient that is labeled, represented, or promoted for use as an ingrown toenail relief drug product is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule that is not in compliance with the regulation is subject to regulatory action. In order to avoid duplication in listing OTC ingrown toenail relief active ingredients in more than one regulation and for ease in locating these ingredients in the Code of Federal Regulations, the agency is listing all of these ingredients in a single regulation in new § 310.538 entitled "Drug products containing active ingredients offered over-the-counter (OTC) for use for ingrown toenail relief." Accordingly, § 310.545(a)(11) is being removed.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 39120 at 39124). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major

rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC ingrown toenail relief drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC ingrown toenail relief drug products is not expected to pose such an impact on small businesses because only a limited number of products are affected. As noted above, the ingredients chloroxylenol and urea have already been removed from OTC ingrown toenail relief drug products. The submitted product that contained sodium sulfide is not currently marketed. The agency is only aware of a few products containing other ingredients (e.g., two combination drug products containing chlorobutanol and tannic acid, and one containing benzocaine and tannic acid). Based on the limited number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a),

371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. New § 310.538 is added to subpart E to read as follows:

§ 310.538 Drug products containing active ingredients offered over-the-counter (OTC) for use for ingrown toenail relief.

(a) Any product that bears labeling claims such as for "temporary relief of discomfort from ingrown toenails," or "ingrown toenail relief product," or "ingrown toenail reliever," or similar claims is considered an ingrown toenail relief drug product. Benzocaine, chlorobutanol, chloroxylenol, dibucaine, sodium sulfide, tannic acid, and urea have been present as ingredients in such products. There is lack of adequate data to establish general recognition of the safety and effectiveness of these or any other ingredients for OTC use for ingrown toenail relief. Based on evidence currently available, any OTC drug product containing ingredients offered for use for ingrown toenail relief cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted for ingrown toenail relief is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use for ingrown toenail relief is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After March 9, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

§ 310.545 [Amended]

3. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended by removing and reserving paragraph (a)(11).

Dated: September 2, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-21948 Filed 9-8-93; 8:45 am]

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Federal Register

Thursday
September 9, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

**21 CFR Parts 310, 700 and 701
Hormone-Containing Drug Products;
Cosmetic Products Containing Hormone
Ingredients; Rule and Proposed Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0144]

RIN 0905-AA06

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any topically applied hormone-containing drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on topically applied hormone-containing drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 5, 1982 (47 FR 430), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify topically applied hormone-containing drug products for OTC human use as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by

the Panel were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final rule, for OTC topically applied hormone-containing drug products was published in the Federal Register of October 2, 1989 (54 FR 40618). Interested persons were invited to file by December 1, 1989, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 30, 1990. New data could have been submitted until October 2, 1990, and comments on the new data until December 3, 1990. Final agency action occurs with the publication of this final rule on OTC topically applied hormone-containing drug products.

As discussed in the preamble to the agency's proposed rule for OTC topically applied hormone-containing drug products (54 FR 40618), the agency advised that the drug products covered by this regulation would be subject to the regulation effective 6 months after date of publication of the final rule in the Federal Register. On or after March 9, 1994, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application. If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC topically applied hormone-containing drug product, the agency will promulgate an appropriate regulation at that time.

In response to the proposed rule, one comment from an individual was submitted. A copy of the comment is on public display in the Dockets Management Branch (address above). In proceeding with this final rule, the agency has considered the issues raised in the comment.

I. The Agency's Conclusions on the Comment

One comment expressed concern about the presence of steroids and steroid derivatives in OTC cosmetic drug products. The comment mentioned the recent purchase of two cosmetic products containing pregnenolone acetate. The comment stated that the name of the ingredient was listed in the labeling of both products, but expressed concern that the labeling of neither

product indicated the chemical origin of the hormone ingredient. The comment stated that cosmetic manufacturers may use corticosteroids such as pregnenolone acetate as well as hormones (from an animal source) in the form of tissue extracts in "F.D.A. acceptable amounts" without truly informing the consumer. The comment mentioned that FDA regulations for cosmetic products require in the product's labeling a listing of all ingredients present, but complained that the source of a hormone ingredient is not required to be disclosed. The comment noted that people with major health concerns, as in the case of a cortisone-related disease such as Cushing's syndrome or an immunosuppressive disorder such as Lupus, might prefer to avoid corticosteroids from a hidden source. The comment contended that consumers who wish to avoid using such products have a right to know what they are using. The comment stated that a product's labeling is misleading when this information is not disclosed and suggested that the agency require disclosure of the chemical origin of a hormone in a cosmetic product's labeling.

There currently is no provision in sections 601 through 603 of the act (21 U.S.C. 361 through 363) that requires manufacturers of cosmetic products to disclose the chemical origin of a hormone ingredient in a cosmetic product's labeling. Nor is there currently any FDA regulation requiring this type of labeling.

In the notice of proposed rulemaking for topically applied hormone-containing drug products for OTC use (54 FR 40618 at 40620), the agency discussed the labeling of cosmetic products containing hormone ingredients. The agency stated that it considers the use of the word "hormone" in the text of the product's labeling or in the ingredient statement to be an implied drug claim, and that such labeling would cause the product to be regulated as a drug. The agency stated that if a manufacturer includes a hormone in its cosmetic product, it may designate this ingredient in the product's labeling by any appropriate name. The agency stated that the chemical name is preferable and mentioned that the chemical name for pregnenolone acetate is "3-hydroxypregn-5-ene-20-one acetate." This name would appear in a listing of all ingredients in the product in accordance with agency regulations in § 701.3 (21 CFR 701.3). Under this regulation, an ingredient must be declared in the product's labeling by the

name specified in the Cosmetics, Toiletries, and Fragrances Association Cosmetic Ingredient Dictionary or, if not in that dictionary, by the name specified in several alternative recognized compendia of chemical substances. The agency now urges cosmetic product manufacturers who include hormone ingredients (or substances containing hormones) in their products to identify these substances in their ingredient declaration using names that are most likely to be recognized by consumers. Following the sequence for designating cosmetic ingredients in § 701.3(c), the agency has now determined that the most appropriate names to use are those contained in the "USAN and the USP dictionary of drug names" listed in § 701.3(c)(2)(v). The names for hormone ingredients are currently not designated in agency regulations. Because the agency's cosmetic regulations specify a specific sequence of sources to be utilized to establish the name to be used for a cosmetic ingredient when the agency has not specified a name in § 701.30, elsewhere in this issue of the Federal Register, the agency is proposing to amend § 701.30 to establish the names that would be permitted to identify hormone ingredients in cosmetic product labeling.

Using the names established by the agency, consumers who wish to avoid a particular cosmetic ingredient, for medical or other reasons, would be able to identify the ingredient contained in a product. Consumers may also contact manufacturers of cosmetic products if they are uncertain whether or not the product contains a specific hormone ingredient. The agency also suggests that consumers with medical conditions who wish to avoid topical corticosteroid products consult with a physician or pharmacist before using a cosmetic product that they believe contains a hormone ingredient.

Because certain hormone ingredients may be present in cosmetic products, the agency believes it would be appropriate to amend the cosmetic regulations to identify these hormones and to specify the upper concentration limits for those ingredients. Therefore, elsewhere in this issue of the Federal Register, the agency is proposing to amend Part 700 (21 CFR part 700) by adding new § 700.20 entitled "Use of certain hormones as ingredients in cosmetic products."

II. The Agency's Final Conclusions on OTC Topically Applied Hormone-Containing Drug Products

The agency has determined that all topically applied hormone-containing

drug products for OTC human use are not generally recognized as safe and effective and are misbranded. This determination includes, but is not limited to, products that contain estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids and synthetic analogs. The final regulation also covers pregnenolone and pregnenolone acetate, steroids that are closely related to progesterone in chemical structure and that exert an estrogen-like action on the skin when applied topically. However, the final regulation does not include hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical analgesic use in accordance with Part 348 (21 CFR part 348).

Except for drug products containing hydrocortisone or hydrocortisone acetate discussed above, any topically applied hormone-containing product bearing any drug claims is considered misbranded under section 502 of the act (21 U.S.C. 352) and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act (21 U.S.C. 355) and Part 314 (21 CFR part 314) of the regulations is required for marketing. In appropriate circumstances, where there are adequate data to establish general recognition of safety and effectiveness, a citizen petition to establish a monograph for OTC topically applied hormone-containing drug products may be submitted under § 10.30 (21 CFR 10.30) in lieu of an application. Any OTC drug product subject to this final rule that is introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule that is not in compliance with the regulation is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (54 FR 40618 at 40621 to 40622). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC topically applied hormone-containing drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topically applied hormone-containing drug products is not expected to pose such an impact on small businesses because there are a limited number of these types of products currently being marketed. As noted in the proposed rule (54 FR 40618 at 40620), there are only a few OTC skin care products containing hormones that are currently subject to new drug applications. The agency is aware of only a few other products that are currently marketed without new drug applications. These products would be able to remain in the market with some relabeling in accord with the notice of proposed rulemaking for cosmetic products containing certain hormone ingredients, published elsewhere in this issue of the Federal Register. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360), 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. New § 310.530 is added to subpart E to read as follows:

§ 310.530 Topically applied hormone-containing drug products for over-the-counter (OTC) human use.

(a) The term "hormone" is used broadly to describe a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect. Hormones include, for example, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids, and synthetic analogs. Estrogens, progesterone, pregnenolone, and pregnenolone acetate have been present as ingredients in OTC drug products marketed for topical use as hormone creams. However, there is a lack of adequate data to establish effectiveness for any OTC drug use of these ingredients. Therefore, with the exception of those hormones identified in paragraph (e) of this section, any OTC drug product containing an ingredient offered for use as a topically applied hormone cannot be considered generally recognized as safe and effective for its intended use. The intended use of the product may be inferred from the

product's labeling, promotional material, advertising, and any other relevant factor. The use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling indicating that "hormones" are present in the product, or any statement that features or emphasizes the presence of a hormone ingredient in the product, will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

(b) Any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of those hormones identified in paragraph (e) of this section, is regarded as a new drug within the meaning of section 201(p) of the act, for which an approved application or abbreviated application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an

approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a topically applied hormone-containing drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After March 9, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) This section does not apply to hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical use in accordance with Part 348 of this chapter.

Dated: September 2, 1993.

Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 93-21946 Filed 9-8-93; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 700 and 701

[Docket No. 91N-0245]

Cosmetic Products Containing Certain Hormone Ingredients; Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking identifying certain hormones that may appear in cosmetic products, specifying the upper concentration limits for those ingredients, and designating the source for naming those ingredients in product labeling. FDA is issuing this notice of proposed rulemaking in conjunction with the agency's final rule for topically applied hormone-containing drug products for over-the-counter (OTC) human use, published elsewhere in this issue of the Federal Register.

DATES: Written comments by November 8, 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John E. Bailey, Center for Food Safety and Applied Nutrition (HFS-440), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-205-4530.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register FDA is issuing a final rule establishing that any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of hydrocortisone and hydrocortisone acetate, is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act). In that final rule, the agency states that "hormone" includes estrogens, progestins, androgens, anabolic steroids, adrenal corticosteroids and synthetic analogs, progesterone, pregnenolone and pregnenolone acetate, and hydrocortisone and hydrocortisone acetate.

Part 720 of FDA's regulations (21 CFR part 720) permits the voluntary filing of cosmetic product ingredient and cosmetic raw material composition statements. Section 720.4(c) requests

that one or more of the categories listed in this section be cited to indicate the product's intended use. In the past, paragraph (12) of § 720.4(c) (skin care preparations) included the category hormone under paragraph (v). However, in the Federal Register of January 28, 1992 (57 FR 3128 at 3129), the agency removed from § 720.4(c)(12) the skin care categories "Hormone," "Skin lighteners," and "Wrinkle smoothing (removers)." The agency noted in its proposal to remove these categories (see the Federal Register of October 25, 1990, 55 FR 42993 at 42994) that these designations have been the subject of considerable regulatory controversy because such items can be both cosmetics and drugs under the act. These designations originally were included in the list of product categories when the regulation was published in the Federal Register of April 11, 1972 (37 FR 7151). At that time, it was the agency's intent to permit the registration of these types of products as cosmetics, but with the understanding that these products are legally both drugs and cosmetics. However, the original category designations have been interpreted by cosmetic manufacturers, and others, to mean that FDA considered these products to be exclusively cosmetics, which certainly is not the case. The agency expects the removal of these three category designations, and registration of such products, if they are also cosmetics, under the remaining category designations, to alleviate misunderstandings that have existed.

Elsewhere in this issue of the Federal Register the agency is completing the rulemaking for topically applied drug products containing hormone ingredients. While products containing hormone ingredients and making drug claims are drugs under the act, certain hormone-containing products not bearing drug claims could be cosmetics depending on the levels of hormones used and whether that level of use affects the structure or any function of the body. However, some hormones, such as anabolic steroids (e.g., methandrostenolone, stanozolol, and oxymetholone) and adrenal corticosteroids (e.g., betamethasone, prednisolone, and prednisone) would be inappropriate for use in a cosmetic product. These hormone ingredients that are used in drug products do not at any level. These hormone ingredients that are used in drug products do not have any legitimate cosmetic uses. A review of cosmetic products registered voluntarily with the agency reveals that

no product identifies any of these drug ingredients in its formulation.

The safety of certain hormone ingredients at specific concentration levels used for topical application has been established by many years of marketing of these products as OTC drugs. In the Federal Register of January 5, 1982 (47 FR 430 at 432), FDA published an advance notice of proposed rulemaking on OTC topically applied hormone-containing drug products. That document contained the results of a review of a number of marketed products containing hormone ingredients that was done by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel). The Panel recommended that FDA regard progesterone in a concentration up to 5 milligrams (mg)/ounce (oz) is safe when used on the skin daily in a quantity not exceeding 2 oz per month. The Panel determined that this amount of topical progesterone does not produce systemic effects and has a low incidence of irritation or allergic local effects. The agency's adverse reaction files (Ref. 1) contain occurrences reported for topical hormone-containing products. None of the occurrences was classified as serious. The reports included two occurrences of vaginal hemorrhage, one of menorrhagia, and one of menstrual disorder. The other reports relate to contact dermatitis, urticaria, rash, and conjunctivitis and are considered less serious.

In the Federal Register of October 2, 1989 (54 FR 40618 at 40621), in the proposed rule on OTC topically applied hormone-containing drug products, FDA concurred with the Panel's conclusion that 5 mg/oz progesterone is safe for OTC use when used in an amount not exceeding 2 oz per month. As discussed below, the agency is proposing in new § 700.20(b)(2) to limit the use of progesterone in cosmetic products to these levels that have been found to be safe but lack effectiveness for drug use (do not affect the structure or any function of the body).

In the same proposed rule (54 FR 40618 at 40621), the agency also tentatively concluded that pregnenolone acetate up to 0.5 percent is safe for OTC use. The agency's proposal was based on findings of the National Academy of Sciences/National Research Council, as part of the agency's Drug Efficacy Study Implementation. (The Panel did not review pregnenolone acetate.) A review of cosmetic products registered voluntarily with the agency reveals only two products formulated using pregnenolone acetate as an ingredient. One product is reported to contain

pregnenolone hemisuccinate in addition to pregnenolone acetate. Pregnenolone succinate is listed in the 1993 edition of "USAN and the USP dictionary of drug names" (Ref. 2), which is the authorized list of established names for drugs in the United States. Pregnenolone acetate is not listed in this reference. Based on its previous evaluation of the safety of pregnenolone acetate, the agency is proposing in new § 700.20(b)(1) to restrict the use of pregnenolone acetate in cosmetic products to no more than 0.5 percent, not to exceed 2 oz per month. At this level, the ingredient would not have a drug effect. However, the agency has not evaluated any safety and effectiveness data on pregnenolone hemisuccinate or pregnenolone succinate. Therefore, the agency is not proposing to include these ingredients in new § 700.20(b)(1), but invites comments and data to support the safe use of these ingredients in cosmetic products. The agency will announce in the final rule whether these ingredients will be included in § 700.20(b)(1).

This proposal specifies the hormone ingredients and their concentrations that may be used in the formulation of cosmetic products. The restrictions on the types and amount of hormone that may be used are based on agency determinations that these are safe levels which do not have any therapeutic effects or do not affect the structure or any function of the body (i.e., have no drug effect). Therefore, the agency is proposing that these levels of hormones be permitted for cosmetic conditions of use. At this time, the safety of hormones for inclusion in cosmetic products has been established only for progesterone at a concentration level up to 5 mg/oz and pregnenolone acetate at a concentration level up to 0.5 percent, when labeled for use not to exceed 2 oz per month. Any topically-applied products containing progesterone at concentrations of 5 mg/oz or less or pregnenolone acetate at concentrations of 0.5 percent or less are at this time regarded as cosmetics, provided the product labeling does not contain any drug claims as discussed elsewhere in this issue of the *Federal Register*.

The Panel reviewed a product containing "natural estrogens," i.e., a mixture of estrone and estradiol at a total concentration of 10,000 International Units (I.U.) per oz, and concluded that there were inadequate data to establish the safety of topically applied estrogens in concentrations up to 10,000 I.U. per oz. In the proposed rule for OTC topically applied hormone-containing drug products (54 FR 40618 at 40621), the agency stated that natural estrogens in concentrations up to 10,000

I.U. per oz are safe for topical application to the skin when used in amounts not to exceed 2 oz per month. However, the agency has no information on the concentration of individual estrogenic hormone chemicals (i.e., estradiol and estrone or any other estrogenic chemicals) present in natural estrogens. As a result, the agency is not currently able to establish the concentrations at which the individual estrogen hormone chemicals (which were found by the Panel to be safe for drug use) do not have therapeutic or other drug effects, i.e., at what levels it has been established that the ingredients do not affect the structure or any function of the body. Because insufficient information exists to allow the establishment of safe concentrations of individual estrogen hormone chemicals for use in cosmetic products, the agency is proposing at this time not to permit the use of natural estrogens, or any individual hormone chemicals that are constituents of natural estrogens, as ingredients for formulating cosmetic products. This use is not allowable because the agency is unable to establish at this time at what level of use of these hormone ingredients there is only a cosmetic effect and no drug effect. Therefore, the agency concludes at this time that any use of natural estrogens in cosmetic products makes the product an unapproved new drug. The conclusion is based on available data stating conclusively that at some levels the ingredients affect the structure or function of the body, and a concomitant lack of data establishing at what level, if any, the drug effect ceases. The agency invites comment on the qualitative and quantitative composition of natural estrogens that would allow the setting of safe levels for use in cosmetic products.

The agency is aware that estrogens and estrogen-containing substances have been used in cosmetic products. Manufacturers of such products are urged to submit data on the safety and exact chemical identity of such estrogens or estrogen-containing substances. The submission should also contain product labeling (current and historical) and provide information showing how long the cosmetic product containing this ingredient has been marketed. If adequate information is not provided to establish the chemical identity and composition of natural estrogens used in cosmetic hormone products, the agency will amend § 700.20 at the final rule stage to state that natural estrogens may not be used as ingredients for formulating cosmetic products. Thereafter, any use of natural

estrogens in cosmetic products would make the product an unapproved new drug.

The agency has determined that use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling that "hormones" are present in the product will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or any function of the body. Such claims cause the product to be a drug.

In the proposed rule for OTC topically applied hormone-containing drug products, the agency stated that use of the chemical name of a hormone ingredient in labeling is preferable (54 FR 40618 at 40620). Based on a comment received in response to that proposal, as discussed elsewhere in this issue of the *Federal Register* the agency acknowledges that the chemical name may not be readily recognized by consumers. The agency is designating generally recognized established names to be used to identify these hormone ingredients in cosmetic product labeling, and is including these names in § 701.30.

The agency's cosmetic regulations (21 CFR 701.3(c)) specify a specific sequence of sources to be utilized to establish the name to be used for a cosmetic ingredient when the agency has not specified a name in § 701.30. Under that sequence, "USAN and the USP dictionary of drug names" is not the first source to be utilized. Progesterone is found in USAN (Ref. 3), but pregnenolone acetate is not. Therefore, the agency is proposing to amend § 701.30 to establish progesterone and pregnenolone acetate as the names that are to be used to identify these ingredients in cosmetic product labeling.

The agency is aware that some consumers may wish to avoid using a cosmetic product containing a hormone ingredient for medical or other reasons. The establishment of uniform names to be used in all cosmetic product labeling should aid consumers in identifying those ingredients. Consumers may contact manufacturers of cosmetic products if they are uncertain whether or not the product contains a hormone ingredient. Consumers may also want to consult with a physician or pharmacist before using a cosmetic product that they believe contains a hormone ingredient.

References

- (1) Department of Health and Human Services, Food and Drug Administration, Adverse Reaction Summary Listings, pertinent pages for the years 1969-1985, copy in OTC Volume 16GTFM, Docket No. 81N-0144, Dockets Management Branch.
- (2) "USAN and the USP dictionary of drug names," 30th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 524, 1993.
- (3) "USAN and the USP dictionary of drug names," 30th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 529, 1993.

The agency has determined under 21 CFR 25.24(a)(11) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order. The agency is not aware of any cosmetic hormone products that contain pregnenolone acetate or progesterone in an amount above the levels being proposed in § 700.20(b). Thus, no product reformulations appear to be necessary. Some product relabeling may be necessary if the cosmetic product currently uses the word "hormone" or makes an implied drug claim in its labeling. However, because of the limited number of products affected, the agency concludes that this proposed rule is not a major rule.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that, based on the limited number of affected products, no significant impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before November 8, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 700
Cosmetics, Packaging and containers.

21 CFR Part 701
Cosmetics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Parts 700 and 701 be amended as follows:

PART 700—GENERAL

1. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: Secs. 201, 301, 502, 505, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374).

2. New § 700.20 is added to read as follows:

§ 700.20 Use of certain hormones as ingredients in cosmetic products.

(a) Pregnenolone acetate and progesterone have been used as ingredients in both cosmetics and in cosmetics that are also drugs, depending on the claims made for the product. There are currently no approved over-the-counter hormone drug products except those identified in § 310.530(e) of this chapter.

(b) Pregnenolone acetate and progesterone may be safely used in cosmetic products at certain concentration levels. These ingredients may be included as single ingredients in cosmetic products when the product is formulated to contain up to the following amounts and is labeled with directions for use not to exceed 2 ounces of the product applied topically per month:

- (1) Pregnenolone acetate 0.5 percent.
- (2) Progesterone 5 milligrams per ounce.

(c) Any cosmetic product that contains pregnenolone acetate or progesterone in an amount exceeding

that stated in paragraph (b) of this section or labeled with directions for use that exceed 2 ounces of the product applied topically per month is regarded as an unapproved new drug in accord with § 310.530 of this chapter and is subject to regulatory action under sections 502 and 505 of the act.

(d) Any cosmetic product using the word "hormone" in the text of its labeling or in its ingredient statement is considered as making an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Any cosmetic product labeled as a "hormone cream" or with any statement in its labeling that "hormones" are present in the product or with any claim that the product will affect the structure or function of the body is subject to regulatory action under sections 502 and 505 of the act.

PART 701—COSMETIC LABELING

3. The authority citation for 21 CFR Part 701 continues to read as follows:

Authority: Secs. 201, 502, 601, 602, 603, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 361, 362, 363, 371, 374); secs. 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1454, 1455).

4. Section 701.30 is amended by adding two new entries to the table to read as follows:

§ 701.30 Ingredient names established for cosmetic ingredient labeling.

Chemical name or description	Chemical formula	Established label name
3-Hydroxypregn-5-ene-20-one acetate.	C ₂₃ H ₃₄ O ₃	Pregnenolone acetate.
Pregn-4-ene-3,20-dione.	C ₂₁ H ₃₀ O ₂	Progesterone.

Dated: September 2, 1993.
Michael R. Taylor,
Deputy Commissioner for Policy.
 [FR Doc. 93-21947 Filed 9-8-93; 8:45 am]
 BILLING CODE 4160-01-F



Federal Register

Thursday
September 9, 1993

Part VII

**Environmental
Protection Agency**

Premanufacture Notices; Monthly Status
Report for May 1993

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPPTS-53167; FRL-4636-4]

**Premanufacture Notices; Monthly
Status Report for May 1993**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for May 1993.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Nonconfidential Information Center (NCIC) ETG-099 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPPTS-53167]" and the specific PMN and exemption request number should be sent to: Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG-099, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during May; (d) chemical substances for which EPA has received a notice of commencement to manufacture during May; and (e) PMNs for which the review period has been suspended. Therefore, the May 1993 PMN Status Report is being published.

Dated: August 31, 1993.

George A. Bonina,
*Acting Director, Information Management
Division, Office of Pollution Prevention and
Toxics.*
**Premanufacture Notice Monthly Status
Report for May 1993**

 I. 142 Premanufacture notices and
exemption requests received during the
month:

PMN No.

P 93-0886 P 93-0950 P 93-0952 P 93-0954
P 93-0955 P 93-0956 P 93-0957 P 93-0958
P 93-0959 P 93-0960 P 93-0961 P 93-0962
P 93-0963 P 93-0964 P 93-0965 P 93-0966
P 93-0967 P 93-0968 P 93-0969 P 93-0970
P 93-0971 P 93-0972 P 93-0973 P 93-0974
P 93-0975 P 93-0976 P 93-0977 P 93-0978
P 93-0979 P 93-0980 P 93-0981 P 93-0982
P 93-0983 P 93-0984 P 93-0985 P 93-0986
P 93-0987 P 93-0988 P 93-0989 P 93-0990
P 93-0991 P 93-0992 P 93-0993 P 93-0994
P 93-0995 P 93-0996 P 93-0997 P 93-0998
P 93-0999 P 93-1000 P 93-1001 P 93-1002
P 93-1003 P 93-1004 P 93-1005 P 93-1006
P 93-1007 P 93-1008 P 93-1009 P 93-1010
P 93-1011 P 93-1012 P 93-1013 P 93-1014
P 93-1015 P 93-1016 P 93-1017 P 93-1018
P 93-1019 P 93-1020 P 93-1021 P 93-1022
P 93-1023 P 93-1024 P 93-1025 P 93-1026
P 93-1027 P 93-1028 P 93-1029 P 93-1030
P 93-1031 P 93-1032 P 93-1033 P 93-1034
P 93-1035 P 93-1036 P 93-1037 P 93-1038
P 93-1039 P 93-1040 P 93-1041 P 93-1042
P 93-1043 P 93-1044 P 93-1045 P 93-1046
P 93-1047 P 93-1048 P 93-1049 P 93-1050
P 93-1051 P 93-1052 P 93-1053 P 93-1054
P 93-1055 P 93-1056 P 93-1057 P 93-1058
P 93-1059 P 93-1060 P 93-1061 P 93-1062
P 93-1063 P 93-1064 P 93-1065 P 93-1066
P 93-1067 P 93-1068 P 93-1069 P 93-1070
P 93-1071 P 93-1072 P 93-1073 P 93-1074
P 93-1075 P 93-1076 P 93-1077 P 93-1078
Y 93-0138 Y 93-0139 Y 93-0140 Y 93-0141
Y 93-0142 Y 93-0143 Y 93-0144 Y 93-0145
Y 93-0146 Y 93-0147 Y 93-0148 Y 93-0149
Y 93-0150 Y 93-0151 Y 93-0152 Y 93-0153
Y 93-0154 Y 93-0155

 II. 253 Premanufacture notices received
previously and still under review at the end
of the month:

PMN No.

P 84-0660 P 84-0704 P 84-1145 P 85-0619
P 85-0941 P 85-1331 P 86-0066 P 86-1315
P 86-1648 P 86-1662 P 87-0323 P 88-0998
P 88-0999 P 88-1937 P 88-1938 P 88-1980
P 88-1982 P 88-1984 P 88-1985 P 88-1999
P 88-2000 P 88-2001 P 88-2484 P 88-2518
P 89-0632 P 89-0650 P 89-0721 P 89-0775
P 89-0957 P 89-0958 P 89-0959 P 89-1038
P 89-1058 P 90-0158 P 90-0261 P 90-0262
P 90-0263 P 90-0372 P 90-0550 P 90-0558
P 90-0559 P 90-0564 P 90-0581 P 90-0608
P 90-1422 P 90-1527 P 90-1564 P 90-1592
P 91-0043 P 91-0107 P 91-0108 P 91-0109
P 91-0110 P 91-0111 P 91-0112 P 91-0113
P 91-0242 P 91-0243 P 91-0244 P 91-0245
P 91-0246 P 91-0247 P 91-0248 P 91-0503
P 91-0548 P 91-0572 P 91-0619 P 91-0659
P 91-0689 P 91-0701 P 91-0818 P 91-0826
P 91-0914 P 91-0915 P 91-0939 P 91-0940

P 91-0941 P 91-1009 P 91-1010 P 91-1014
P 91-1015 P 91-1131 P 91-1206 P 91-1210
P 91-1324 P 91-1386 P 91-1394 P 91-1409
P 92-0003 P 92-0031 P 92-0032 P 92-0033
P 92-0048 P 92-0129 P 92-0217 P 92-0314
P 92-0471 P 92-0477 P 92-0478 P 92-0606
P 92-0649 P 92-0714 P 92-0776 P 92-0777
P 92-0787 P 92-0804 P 92-0919 P 92-1003
P 92-1125 P 92-1222 P 92-1255 P 92-1294
P 92-1295 P 92-1296 P 92-1298 P 92-1307
P 92-1308 P 92-1324 P 92-1337 P 92-1345
P 92-1352 P 92-1357 P 92-1364 P 92-1369
P 92-1489 P 92-1503 P 92-1504 P 93-0014
P 93-0017 P 93-0040 P 93-0066 P 93-0067
P 93-0068 P 93-0094 P 93-0122 P 93-0123
P 93-0124 P 93-0126 P 93-0168 P 93-0173
P 93-0174 P 93-0175 P 93-0177 P 93-0184
P 93-0185 P 93-0186 P 93-0187 P 93-0188
P 93-0189 P 93-0190 P 93-0204 P 93-0212
P 93-0213 P 93-0214 P 93-0215 P 93-0227
P 93-0250 P 93-0251 P 93-0252 P 93-0253
P 93-0254 P 93-0255 P 93-0256 P 93-0257
P 93-0277 P 93-0282 P 93-0307 P 93-0313
P 93-0314 P 93-0315 P 93-0316 P 93-0317
P 93-0318 P 93-0333 P 93-0339 P 93-0343
P 93-0352 P 93-0353 P 93-0360 P 93-0362
P 93-0364 P 93-0374 P 93-0375 P 93-0418
P 93-0438 P 93-0476 P 93-0480 P 93-0483
P 93-0498 P 93-0505 P 93-0507 P 93-0512
P 93-0532 P 93-0533 P 93-0552 P 93-0553
P 93-0555 P 93-0561 P 93-0568 P 93-0572
P 93-0577 P 93-0578 P 93-0603 P 93-0627
P 93-0633 P 93-0637 P 93-0646 P 93-0652
P 93-0658 P 93-0687 P 93-0697 P 93-0698
P 93-0699 P 93-0701 P 93-0705 P 93-0706
P 93-0714 P 93-0718 P 93-0720 P 93-0721
P 93-0722 P 93-0723 P 93-0724 P 93-0725
P 93-0726 P 93-0730 P 93-0731 P 93-0732
P 93-0733 P 93-0734 P 93-0735 P 93-0758
P 93-0759 P 93-0761 P 93-0831 P 93-0832
P 93-0835 P 93-0838 P 93-0853 P 93-0854
P 93-0855 P 93-0856 P 93-0857 P 93-0858
P 93-0860 P 93-0861 P 93-0880 P 93-0881
P 93-0882 P 93-0936 P 93-0937 P 93-0941
Y 93-0109

III. 177 Premanufacture notices and
exemption request for which the notice review
period has ended during the month.
(Expiration of the notice review period does
not signify that the chemical has been added
to the Inventory).

PMN No.

P 89-1038 P 90-1318 P 90-1319 P 90-1320
P 90-1321 P 90-1322 P 90-1687 P 90-1745
P 92-0031 P 92-0032 P 92-0033 P 92-0396
P 92-0813 P 92-1337 P 92-1394 P 92-1454
P 92-1455 P 93-0096 P 93-0097 P 93-0122
P 93-0123 P 93-0124 P 93-0173 P 93-0174
P 93-0175 P 93-0193 P 93-0361 P 93-0376
P 93-0438 P 93-0496 P 93-0497 P 93-0499
P 93-0500 P 93-0501 P 93-0502 P 93-0503
P 93-0504 P 93-0505 P 93-0506 P 93-0508
P 93-0509 P 93-0510 P 93-0511 P 93-0513
P 93-0514 P 93-0515 P 93-0516 P 93-0517
P 93-0518 P 93-0519 P 93-0520 P 93-0521
P 93-0522 P 93-0523 P 93-0524 P 93-0525
P 93-0526 P 93-0527 P 93-0528 P 93-0529
P 93-0530 P 93-0531 P 93-0533 P 93-0534
P 93-0535 P 93-0536 P 93-0537 P 93-0538
P 93-0539 P 93-0540 P 93-0541 P 93-0542
P 93-0543 P 93-0544 P 93-0545 P 93-0546
P 93-0547 P 93-0548 P 93-0549 P 93-0550
P 93-0551 P 93-0554 P 93-0556 P 93-0557
P 93-0558 P 93-0559 P 93-0560 P 93-0562

P 93-0563	P 93-0564	P 93-0565	P 93-0566	P 93-0599	P 93-0600	P 93-0601	P 93-0602	Y 93-0115	Y 93-0116	Y 93-0117	Y 93-0118
P 93-0567	P 93-0569	P 93-0570	P 93-0571	P 93-0604	P 93-0605	P 93-0606	P 93-0607	Y 93-0119	Y 93-0120	Y 93-0121	Y 93-0122
P 93-0573	P 93-0574	P 93-0575	P 93-0576	P 93-0608	P 93-0609	P 93-0610	P 93-0611	Y 93-0123	Y 93-0124	Y 93-0125	Y 93-0126
P 93-0579	P 93-0580	P 93-0581	P 93-0582	P 93-0612	P 93-0613	P 93-0614	P 93-0615	Y 93-0127	Y 93-0128	Y 93-0129	Y 93-0130
P 93-0583	P 93-0584	P 93-0585	P 93-0586	P 93-0616	P 93-0617	P 93-0618	Y 93-0101	Y 93-0131	Y 93-0132	Y 93-0133	Y 93-0134
P 93-0587	P 93-0588	P 93-0589	P 93-0590	Y 93-0102	Y 93-0103	Y 93-0104	Y 93-0105	Y 93-0135	Y 93-0136	Y 93-0137	Y 93-0138
P 93-0591	P 93-0592	P 93-0593	P 93-0594	Y 93-0106	Y 93-0107	Y 93-0108	Y 93-0110	Y 93-0139			
P 93-0595	P 93-0596	P 93-0597	P 93-0598	Y 93-0111	Y 93-0112	Y 93-0113	Y 93-0114				

IV. 64 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/Generic Name	Date of Commencement
P 85-0718 P 86-1648	G Polyol polyacrylate 1-Oxo 4-azaspiro(4,5)decane, 4-(dichloroacetyl)-	March 17, 1993. October 29, 1990.
P 87-0555 P 88-1303	Octanol propanol G Halogenated hydrocarbon	December 26, 1993. December 8, 1990.
P 88-1304 P 88-1616 P 88-2540	G Polypiperidinol acrylate-methacrylate G Carboxylated novolak acrylate G Nitrate esters	March 19, 1993. January 5, 1989. February 21, 1990.
P 88-2600 P 88-2601 P 90-0164	G Dialkyl dimethyl ammonium salt of substituted arylazo G Dialkyl dimethyl salt of substituted arylazo butanamide G Mixed esters of oleic acid, an unsaturated fatty acid, and an oil containing fatty acids, glycerides and alcohols	March 19, 1993. March 19, 1993. March 17, 1993.
P 90-0212	G Chlorofluoroalkane	August 16, 1990.
P 91-0259 P 91-0638 P 91-0992 P 91-0993 P 91-1012 P 91-1226 P 92-0149	G Amine functional acrylic polymer salt G Ethyl, alkenoate Trimethylolpropane, esters with C ₅ -C ₉ fatty acid and isononanoic acid Trimethylolpropane, esters with C ₅ -C ₉ fatty acid and isononanoic acid G Substituted alkyl alcohol G Fatty diol, C ₃₆ branched, saturated G Organopolysiloxane metal salt	March 19, 1993. April 6, 1993. March 22, 1993. March 22, 1993. March 24, 1993. March 16, 1993. February 10, 1992.
P 92-0328	G Trisubstituted hydroquinone	February 26, 1993.
P 92-0329 P 92-0443	G Trisubstituted hydroquinone diester G Vinylchloride-ethylene-vinylaurate terpolymer	March 11, 1993. December 25, 1992.
P 92-0516 P 92-0612 P 92-0733 P 92-0736 P 92-0831 P 92-0988 P 92-0989 P 92-1001 P 92-1005 P 92-1006 P 92-1140 P 92-1319 P 92-1362 P 92-1372 P 92-1380 P 92-1412 P 92-1436 P 92-1481 P 92-1486 P 92-1511 P 93-0016 P 93-0044 P 93-0054 P 93-0060 P 93-0088 P 93-0108 P 93-0110 P 93-0120 P 93-0125	G Alkyl methacrylate copolymer G Amine-terminated polyol G Mono-bromo substituted alkyne G Urethane acrylic latex 3,4-Dimethyl benzaldehyde G Alkylsichlorosilane G Dialkyldichlorosilane G Acrylic tetrapolymer G Polyester G Acrylate functional polyurethane resin G Water based polyurethane G 2,2-Bis(hydroxymethyl)-1,3-propanediol, tetraesters with straight chain and branched acids G Polymer from aromatic amine maleimide and a vinyl comonomer G Poly(acrylonitrile-co-styrene-co-vinylidene chloride) G Acrylic polymer Hydrogenated hydroxy terminated polyisoprene G Polyurethane, trimethylamine salt G Poly alpha olefin G Modified styrene-isoprene block copolymer G Aliphatic polyester polyurethane G Polyamideimide G Vinyl modified nonionic surfactant G Polyester polyurethane G Anthraquinone derivative G Acrylic polymer G Polyether acetate G Vinylidene chloride acrylate ester polymer G Polyester polyurethane acrylate oligomer A phthalic anhydride, maleic anhydride, tall oil fatty acids, neopentyl glycol, ethylene glycol, and pentaerythritol polyester reacted with styrene and methacrylate acid	March 29, 1993. March 17, 1993. March 18, 1993. March 5, 1993. March 28, 1993. March 4, 1993. March 4, 1993. March 2, 1993. March 30, 1993. March 5, 1993. April 1, 1993. March 30, 1993. March 2, 1993. March 30, 1993. March 24, 1993. March 19, 1993. March 28, 1993. March 4, 1993. March 16, 1993. March 10, 1993. April 2, 1993. March 29, 1993. March 24, 1993. April 8, 1993. April 2, 1993. March 5, 1993. March 10, 1993. March 10, 1993.
P 93-0162 P 93-0191 P 93-0219	G Aromatic polyether polyester G 2-Propenoic acid, reaction product with tetrakisol G Blocked aliphatic polyisocyanate	April 1, 1993. March 16, 1993. March 1, 1993. April 2, 1993

IV. 64 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—
Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 93-0223	G Polyether urethane acrylate oligomer	March 10, 1993.
P 93-0225	G Copolymer alkyl	March 10, 1993.
P 93-0259	G Aqueous polyurethane dispersion	March 19, 1993.
P 93-0285	Amines, hydrogenated rapeseed alkyl	March 25, 1993.
P 93-0297	G Polyurethane	March 23, 1993.
P 93-0344	1-(2-Tert-butyl cyclohexyloxy)-2-butanol	April 12, 1993.
P 93-0535	G Substituted triazine	March 29, 1993.
Y 88-0223	G Oil-free polyester resin	March 9, 1993.
Y 93-0047	G Copolymer of methacrylic esters	March 30, 1993.
Y 93-0055	G Polymer of modified bisphenolA and aliphatic anhydrides	March 23, 1993.
Y 93-0072	G Hydroxyl functional polycarbonyl (polyalkylene oxide) oligomer	April 8, 1993.

V 17 Premanufacture notices for which the period has been suspended.

PMN No.

P 93-0317 P 93-0318 P 93-0505 P 93-0507
P 93-0512 P 93-0552 P 93-0555 P 93-0561

P 93-0568 P 93-0572 P 93-0577 P 93-0603
P 93-0627 P 93-0633 P 93-0701 P 93-0720
Y 93-0131

[FR Doc. 93-21992 Filed 9-8-93; 8:45 am]

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Public inspection desk	523-5215
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Laws

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Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
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---------------------	----------

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46073-46528.....	1
46529-46758.....	2
46759-47014.....	3
47015-47198.....	7
47199-47370.....	8
47371-47618.....	9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:	
11858 (Amended by EO 12860).....	47201
12775 (See DOT rule of Sept. 2).....	46540
12779 (See DOT rule of Sept. 2).....	46540
12860.....	47201
Proclamations:	
6587.....	47199

5 CFR

Proposed Rules:	
2634.....	46096

7 CFR

Ch. III.....	47206
246.....	47015
400.....	47203
406.....	46073
915.....	46759
946.....	47025
947.....	46760, 47025
948.....	47025
953.....	47025
955.....	47023
958.....	47025
982.....	47025
989.....	47028
1160.....	46761
1230.....	47204
1982.....	46074
Proposed Rules:	
52.....	47071
319.....	47074
1160.....	46877
1405.....	46886
1413.....	46886
1755.....	46097, 46110
1980.....	46889

9 CFR

Ch. I.....	47206
96.....	47029
Proposed Rules:	
78.....	47222
82.....	46569
92.....	47084
113.....	47222

10 CFR

Proposed Rules:	
72.....	47222
430.....	47326

12 CFR

7.....	46529
34.....	46529
208.....	47206
211.....	46076, 47206

225.....	47206
931.....	47181
932.....	47181
933.....	47181
Proposed Rules:	
215.....	47400
936.....	46569

13 CFR

107.....	47031
121.....	47371
Proposed Rules:	
121.....	46573, 47181

14 CFR

25.....	46536
39.....	46076, 46766, 46767, 46768, 46769, 46770, 46771, 46772, 47033, 47034, 47035, 47036, 47038, 47209
71.....	46539, 47039, 47040, 47041, 47042, 47043, 47044, 47045, 47371, 47372, 47373, 47374, 47375
97.....	47048, 47048
121.....	46500
Proposed Rules:	
Ch. I.....	46585, 47405
39.....	46135, 46136, 46137, 46139, 46914, 46916, 46917, 47085, 47224, 47225, 47227, 47405, 47407, 47409
71.....	46586, 47087, 47411, 47413

15 CFR

770.....	47052
771.....	47049, 47051, 47052
774.....	47052
775.....	47051, 47052
776.....	47052
777.....	47049
778.....	47049
779.....	47049, 47052
785.....	47051, 47052
799.....	47049, 47322
Proposed Rules:	
295.....	46919

19 CFR

Proposed Rules:	
175.....	47413

20 CFR

416.....	47532
----------	-------

21 CFR

310.....	46744, 46746, 46749, 47602, 47608
314.....	47340
510.....	47056, 47376
520.....	47210

522.....47376	161.....46081	Proposed Rules:	2052.....47220
556.....47210	165.....46078, 46082, 46083,	105-57.....46596	Proposed Rules:
558.....47056	47069	42 CFR	215.....47242
804.....46514	Proposed Rules:	412.....46270	225.....47243
807.....46514	100.....47099	413.....46270	252.....47243
Proposed Rules:	182.....46144	Proposed Rules:	1815.....47244
207.....46587	34 CFR	417.....46925	1831.....47244
211.....47088	21.....47192	43 CFR	1852.....47244
314.....47088	232.....46756	3160.....47354	49 CFR
334.....46589	649.....47069	Proposed Rules:	107.....46872
514.....47088	36 CFR	8360.....46151	571.....46551, 46873
700.....47611	Proposed Rules:	5450.....47241	585.....46551
701.....47811	242.....46678	44 CFR	Proposed Rules:
870.....46919	38 CFR	3.....47218	571.....46928,
24 CFR	3.....46865	45 CFR	46938, 47426, 47427
25.....47377	21.....46865, 46866	400.....46089	1312.....47104
86.....47056	Proposed Rules:	Proposed Rules:	50 CFR
201.....47319, 47377	3.....46919	301.....47417	661.....46093
203.....47319	20.....47100	305.....47417	663.....46094
234.....47319	40 CFR	607.....46597	672.....46095
26 CFR	52.....46541, 46867, 47211,	608.....46800	675.....47221
1.....46773, 46828, 46835,	47379, 47383, 47385, 47391	1207.....46602	Proposed Rules:
47060, 47061	55.....47398	1208.....46602	17.....46940, 47428
Proposed Rules:	80.....46508	47 CFR	100.....46678
1.....47013, 47089, 47090	81.....47391	21.....46547	227.....46944
27 CFR	180.....46084,	22.....46547	285.....46153
Proposed Rules:	46087, 47214, 47215	73.....46090, 46550, 46551	625.....47245
5.....46141	185.....46087	76.....46718	630.....46153
30 CFR	228.....46544	94.....46547	642.....47428
913.....46845	271.....47216	97.....47218	650.....46606
914.....46857	281.....47217	Proposed Rules:	678.....46153
935.....46861	300.....46087	73.....46152, 46605	
Proposed Rules:	Proposed Rules:	76.....46737	
800.....47598	Ch. I.....47414	48 CFR	
913.....47237	52.....47101, 47103, 47239,	232.....46091	
948.....46676	47414, 47415	252.....46091	
31 CFR	123.....46145, 47417	522.....47398	
580.....46540	180.....46147, 46149	552.....47398	
33 CFR	372.....46596	1808.....47219	
100.....46078	721.....46921	1852.....47219	
117.....46080, 47067, 47068	745.....46921	2017.....47220	
	41 CFR		
	101-49.....46088		

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 19, 1993

Public Laws

103d Congress, 1st Session, 1993

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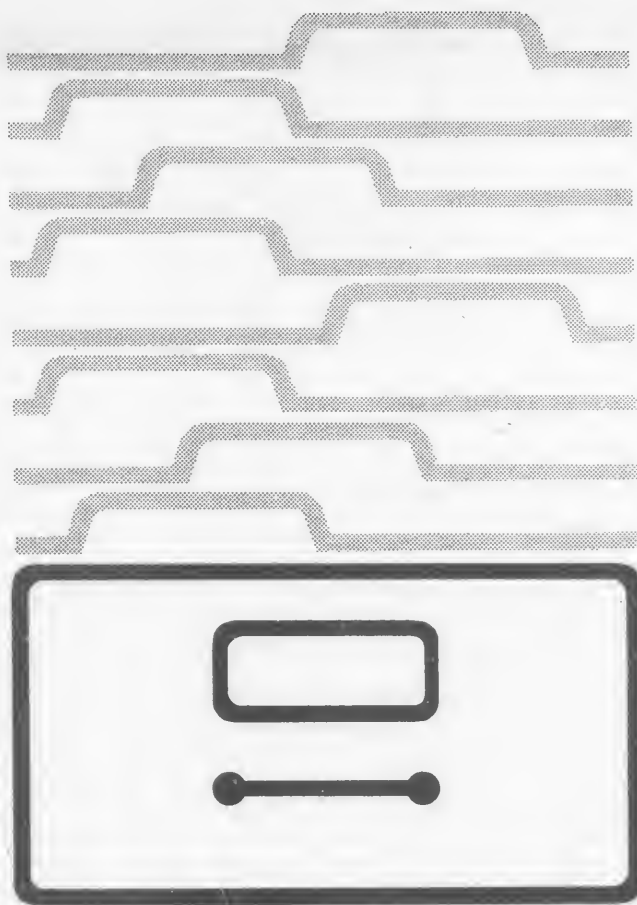
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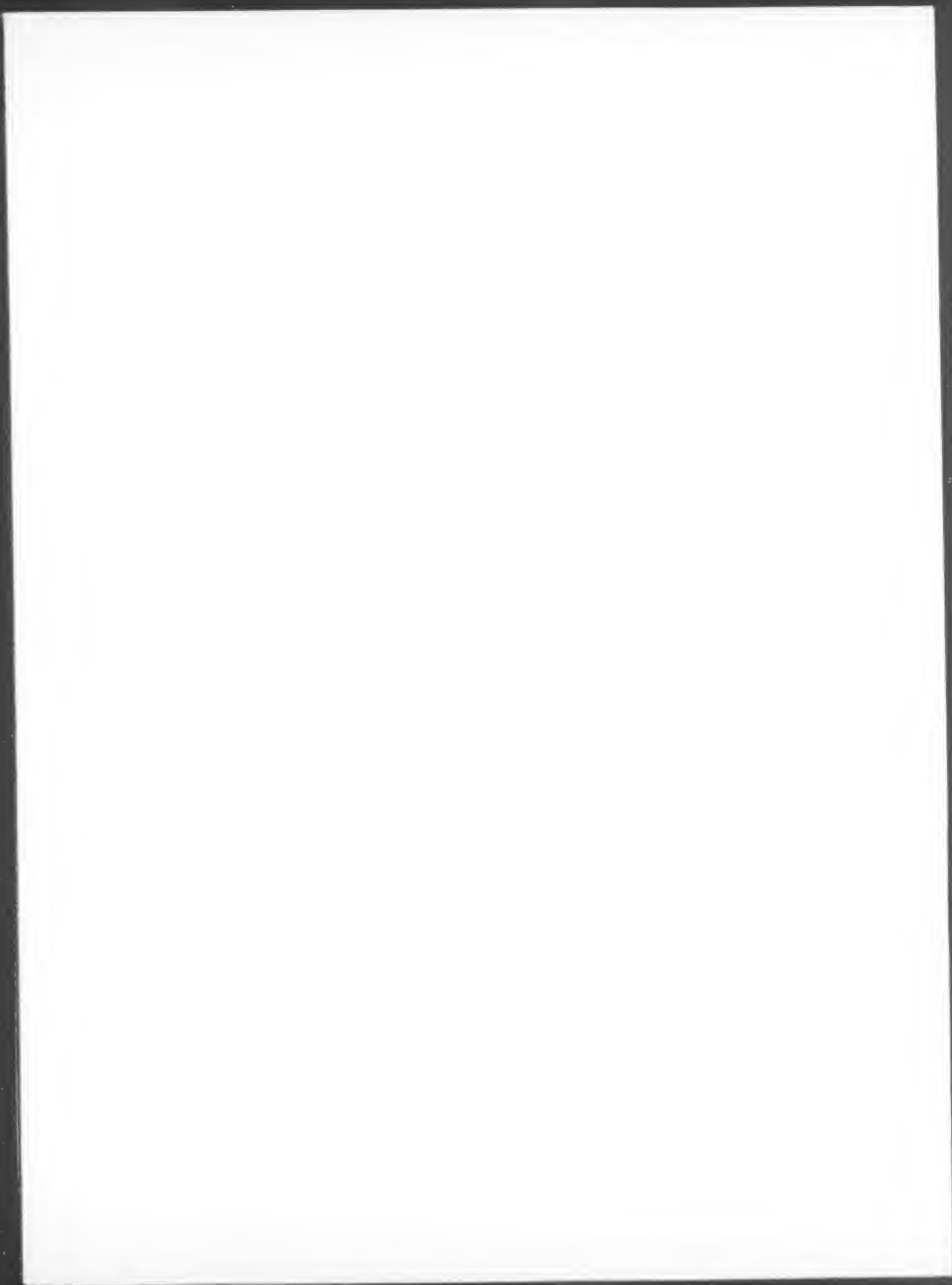
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